TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

26

OCTOBER TERM, 1923.

No. 265.

TRANSPORTES MARITIMOS DO ESTADO, PLAINTIFF IN ERROR,

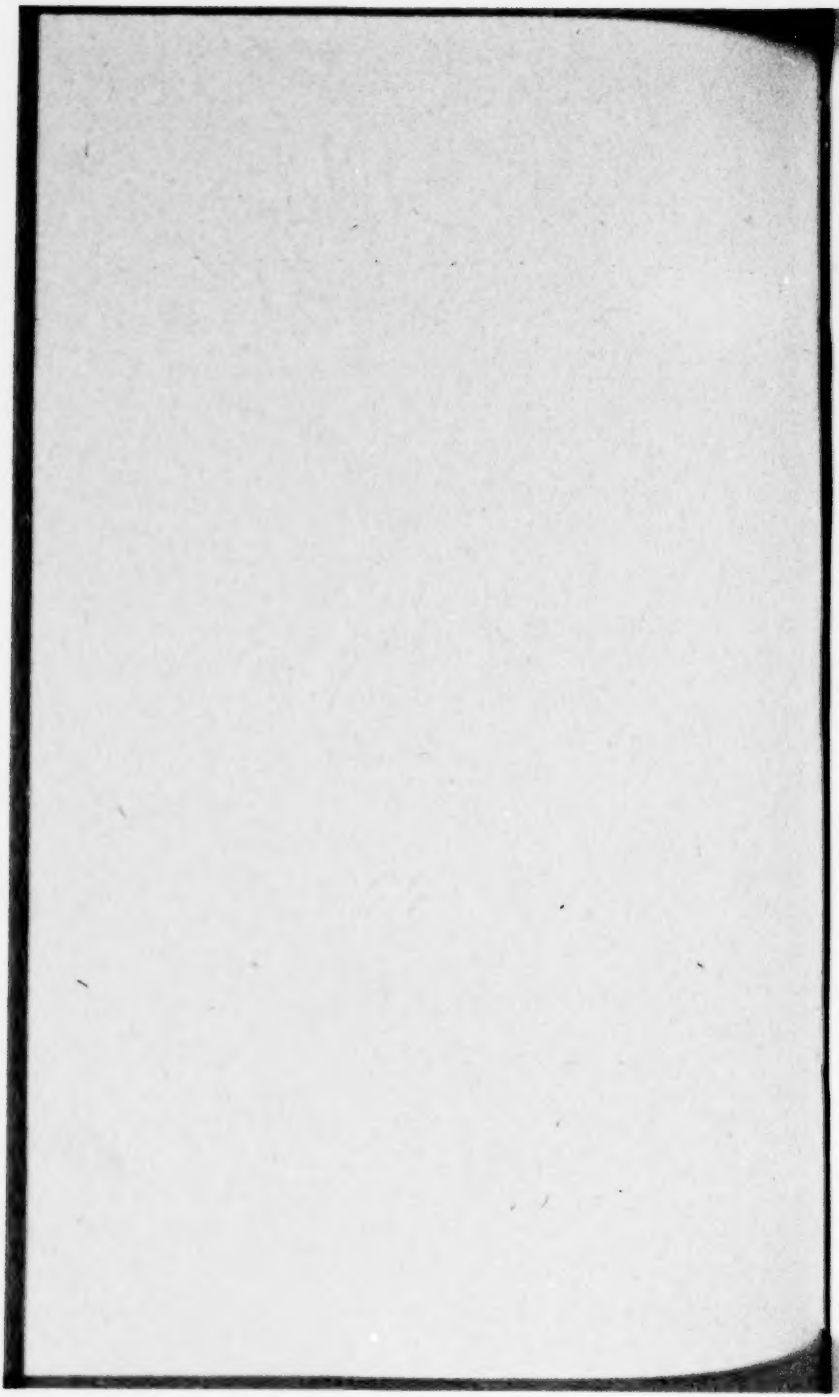
vs.

SYLVIO A. ALMEIDA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MARCH 31, 1923.

(29,500)



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1 PRÆCIPE FOR SUMMONS.

[Filed Sept. 28, 1920.]

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK.

Law. 23, p. 70

SYLVIO A. ALMEIDA, Plaintiff,

against

TRANSPORTES MARITIMOS DO ESTADO, Defendant.

Action under Special Rule for Seamen to Sue Without Prepayment of Fees or Security for Costs.

Præcipe.

The clerk is requested to issue summons against the above named defendant.

The residence of plaintiff is 113 Van Brunt Street, Brooklyn, New York.

The office of plaintiff's attorney of record is No. 9 State Street, Borough of Manhattan, City and State of New York, and all papers in this cause may be served upon Silas B. Axtell, 9 State Street, New York City. Silas B. Axtell, Attorney for Plaintiff, Office and Post Office Address, 9 State Street, New York City, N. Y.

2 Copy.

United States District Court for the Southern District of New York.

L. 23, Page 70.

[Title omitted.]

SUMMONS.

[Filed Oct. 7, 1920.]

To the above-named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Hon. Learned Hand, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, this 28th day of September in the year one thousand nine hundred and twenty. Alex. Gilchrist, Jr., Clerk. Silas B. Axtell, Plaintiff's Attorney, Office and Postoffice Address 9 State Street, Borough of Manhattan, New York City.

3 & 4 United States District Court, Southern District of New York.

[Title omitted.]

COMPLAINT.

[Filed Oct. 7, 1920.]

Action under Special Rule for Seamen to Sue Without Security or Prepayment of Fees for the Enforcement of Laws of the United States, Common and Statutory, for the Protection of the Health and Safety of Seamen at Sea.

Plaintiff, complaining, alleges:

First. Upon information and belief, that the defendant herein is a foreign corporation organized and existing under and by virtue of the laws of Portugal, and has an office for the transaction of business in the State and City of New York, Borough of Manhattan, Southern District of New York, by and through its general agents, Roderick & Ramsay.

Second. Upon information and belief, that at all the times hereinafter mentioned, defendant owned and or operated and or controlled and or managed and or chartered a certain merchant vessel flying the Portuguese flag known as the Goa.

Third. That heretofore and on or about the 28th day of January, 1920, plaintiff, a merchant seaman, at the City of New York before the Portuguese Consul, entered into an agreement wherein and whereby it was provided that plaintiff should engage himself on the said vessel as messboy, for a voyage thereon to South American ports and Lisbon, Portugal and return to the United States to be paid off and discharged, at the rate of wages of $75 per month and found.

Fourth. That in accordance therewith plaintiff joined said vessel and entered upon the performance of his duties as such, and
5 well and faithfully performed all the terms and conditions thereof until on or about the 26th day of April, 1920, when, at Lisbon, Portugal, without cause or justification, plaintiff was wrongfully and illegally discharged, without his consent, against his will and under protest.

Fifth. That as a result thereof, plaintiff was compelled to remain in a foreign port until on or about the 5th day of July, 1920, and was returned as a steerage passenger on board the merchant vessel flying the Portuguese Flag, known as the Cunene and arrived in the port of New York on or about the 28th day of July, 1920; that plaintiff makes claim and is entitled to the difference between steer-

age passage from Lisbon, Portugal to the port of New York, and reasonable passage in the sum of $75.00.

Sixth. That it is provided by Section 4529 of the United States Revised Statutes as follows:

"The master or owner or any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens, and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court; but this section shall not apply to masters or owners of any vessel the seamen of which are entitled to share in the profits of the cruise or voyage."

Seventh. That by reason of the foregoing plaintiff makes claim and is entitled to his wages from the beginning of the voyage
6 on or about the 28th day of January, 1920, until his arrival in New York, on or about the 28th day of July, 1920, in the sum of $150.00, no part whereof has been paid except his wages up to and including the 26th day of April, 1920, together with the sum of about $40.00, leaving a balance due and owing from defendant to plaintiff in the sum of $185.00; and that there is now due and owing under said statute the sum of $75.00; that due demand has been made upon the defendant for said wages, but payment thereof has been refused, and upon information and belief, payment thereof will be refused by the defendant for at least another month, to plaintiff's damage in the sum of $150.00.

Wherefore, plaintiff demands judgment against the defendant in the sum of $185.00, with interest thereon from the 26th day of April, 1920, together with the costs and disbursements of this action. Silas B. Axtell, Attorney for Plaintiff, 9 State Street, Borough of Manhattan, City of New York.

7 & 8 STATE OF NEW YORK,
City and County of New York, ss:

Sylvio Almeida being duly sworn, deposes and says that he is the plaintiff in the within action; that he has heard read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true. Sylvio Almeida

Sworn to before me, this 16th day of August, 1920. Abraham Lavenburg, Notary Public, Bronx County No. 62. Cert. Filed in Bronx Reg. No. 2154. Cert. Filed N. Y. County No. 381. Cert. Filed N. Y. Reg. No. 1385. Cert. Filed Kings County No. 62. Cert. Filed Kings Reg. No. 1122. Term Expires March 30, 1921.

9 [File endorsement omitted.]

10 United States District Court, Southern District of New York.

[Title omitted.]

ANSWER.

[Filed Nov. 20, 1920.]

The defendant, by Frank M. Patterson, its attorney, answering the complaint, respectfully alleges:

I. Upon information and belief, defendant denies the truth of the allegations contained in the paragraph marked "First" of the complaint, except that it admits that at the times therein mentioned it had an office for the transaction of business in the City, County and State of New York.

II. It admits the truth of the allegations contained in the paragraph marked "Second" of the complaint.

III. Upon information and belief, it denies the truth of the allegations contained in the paragraph marked "Third" of the complaint, except that it admits that on or about the 28th day of January, 1920, plaintiff entered into a certain written agreement at the City of New York before the Portugese Consul, wherein and whereby it was provided that he should engage himself for services with the defendant.

IV. Upon information and belief, it denies the truth of the allegations contained in paragraph marked "Fourth" of the complaint, except that it admits that plaintiff thereafter joined the vessel Goa, performed certain services and that on or about the 26th day of April, 1920, said vessel arrived at the Port of Lisbon,

11 Portugal, where the crew, including the plaintiff herein were paid the wages theretofore earned and due them.

V. Upon information and belief, it denies the truth of the allegations contained in the paragraph marked "Fifth" of the complaint, except that it admits that plaintiff, in or about the 5th day of July, 1920, was returned as a passenger on board the vessel flying the Portugese flag, known as Cumene, operated by defendant.

VI. It denies that it has any knowledge or information sufficient to form a belief as to the allegations contained in paragraph marked "Sixth" of the complaint.

VII. Upon information and belief, it denies the truth of the allegations contained in paragraph marked "Seventh" of the complaint, except that it admits that plaintiff has received his wages up to and including the 26th day of April, 1920, together with the sum of

about Forty ($40.00) Dollars and that he has demanded of defendant the wages claimed by him to be due and that payment of the amount claimed by plaintiff has been refused.

IX. Further answering the complaint herein and as a separate distinct and complete defense thereto, defendant alleges on information and belief:

1. That the S. S. Goa is a Portugese vessel and the contract of service entered into by plaintiff on or about the 28th day of January, 1920, was a Portugese contract and governed by the laws of Portugal. Upon entering the services of a Portugese vessel the aforementioned plaintiff subjected himself to the laws of Portugal and any claim which he may put forth against the said vessel and her owners are governed by said laws.

12 2. Further answering and objecting to the assumption by this court of jurisdiction of this case the respondent alleges, that it is a department of a sovereign foreign government at peace with the United States of America and allied with the United States in the late World War, and that all the matters set forth in said complaint relate to the internal management of a Portugese vessel outside the jurisdiction of the United States and in accordance with the provisions of the Merchants' Shipping Act and international comity, the settlement of these matters should be left to the Portugese Consul at the Port of New York.

3. That the plaintiff signed shipping articles before the Portugese Consul at the Port of New York on or about the 28th day of January, 1920, as a member of the crew of the S. S. Goa in the capacity of mess boy and at the wages specified in said contract. That said shipping articles provided that the sailors, including plaintiff were hired for a voyage to terminate at Lisbon, Portugal, and that they were to be returned to the Port of New York on a boat of the defendant's and paid for their time while on said boat returning to the Port of New York.

4. That the above named shipping articles constituted the whole agreement or contract entered into by the above named seamen with the defendant.

5. That the vessel Goa completed her voyage in accordance with said shipping articles at the final port of destination, Lisbon, Portugal, on or about the 26th day of April, 1920.

6. That the crew signed clear of said vessel in said Port of Lisbon in conformity with the above mentioned shipping articles and that the crew was returned to the Port of New York on a
13 vessel of the defendant's in accordance with the said agreement, arriving in New York in July, 1920.

7. The defendant objects and protests to the assumption of jurisdiction by this Court and alleges that it is a sovereign allied government at peace with the United States and that it cannot be sued in the Courts of the United States without its consent.

8. That at the commencement of this action there was, and now is, another action, a libel action, pending in the United States District Court, Southern District of New York, wherein this plaintiff is one

of the libelants and wherein this defendant is the respondent, and for the same cause as that set forth in the complaint herein.

Wherefore, defendant prays that the complaint herein be dismissed with costs to the defendant as against the plaintiff and that the Court grant to the defendant such other and further relief as the justice of the case may require. Frank M. Patterson, Attorney for Defendant, Office & P. O. Address No. 30 Pine Street, Borough of Manhattan, City of New York.

14 UNITED STATES OF AMERICA.
State of New York,
Southern District of New York, ss:

Jose Rocha Prista, being duly sworn, says:

I am the acting Consul General for the Government of Portugal with an office in the City of New York in the Southern District of New York. The respondent, as I am informed and believe, is a department of the Republic of Portugal, a sovereign foreign government.

I have read the foregoing answer and know the contents thereof; that the same is true to my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

The sources of my information and the grounds of my belief as to the matters stated to be alleged upon information and belief are records at the Port of New York kept by respondent and communications received from respondent's agents.

The reason this verification is not made by the respondent is that the respondent is a department of Portugal and is not within the jurisdiction of the United States. Jose Rocha Prista.

Sworn to before me this 19th day of November, 1920. Eugene H. Murphy, Notary Public, New York County No. 258. New York County Register's No. 2326. Commission expires March 30, 1922.

15 At a Term of the District Court Held in and for the Southern District of New York at the Post Office Building, in the Borough of Manhattan City of New York, on the 29th Day of November, 1921.

Present: Hon. John C. Knox, District Judge.

[Title omitted.]

ORDER SUBSTITUTING ATTORNEYS.

[Filed Nov. 28, 1921.]

Upon reading and filing the annexed consent of Frank M. Patterson and of George S. Duarte, Consul General of Portugal in the State of New York, as the lawful representative of the above named respondents herein, who have their place of business in the Republic of Portugal, and on motion of F. Dudley Kohler, it is hereby

Ordered that F. Dudley Kohler of No. 25 Broadway, Borough of Manhattan, City of New York, be and he hereby is substituted in place and stead of Frank M. Patterson as proctor for the respondents in the above entitled action. Jno. C. Knox, U. S. D. J.

16 United States District Court, Southern District of New York.

[Title omitted.]

It is hereby consented that F. Dudley Kohler of 25 Broadway, Borough of Manhattan, City of New York, be substituted in the place and steady of Frank M. Patterson, as Proctor for the respondents in the above entitled action, and that an order to that effect may be entered without further notice.

Dated, New York, November 19th, 1921. Frank M. Patterson, Proctor for Respondents. George S. Duarte, Consul General of Portugal.

STATE OF NEW YORK,
County of New York, ss:

On this 19th day of November, 1921, before me personally came the above named George S. Duarte to me known and known to me to be the person described in and who executed the foregoing consent and he thereupon acknowledged to me that he executed the same, and that he is the Consul General of Portugal. Rose Alexander, Notary Public, New York County. New York County Clerk's No. 213, New York Register's No. 3171. Commission expires March 30th, 1923.

17 United States District Court, Southern District of New York.

[Title omitted.]

AMENDED BILL OF EXCEPTIONS.

[Filed March 26, 1923.]

Trial at Common Law Before Honorable Henry W. Goddard, U. S. D. J., on January 19th, 1923.

Appearances: Silas B. Axtell, Attorney for Plaintiff; F. Dudley Kohler, Attorney for Defendant.

By consent a jury of one was empanelled and sworn.

Opening for plaintiff.

Plaintiff asked damages for breach of a maritime contract of shipping, the amount of recovery if any," in the stipulated sum of $435.00. Contract offered in evidence and marked plaintiff's Exhibit "1".

Plaintiff offers another translated contract in similar form for the purpose of indicating the nature of the contract in this case. This contract is marked plaintiff's Exhibit "2".

The plaintiff asked judgment in the full amount due to the fact that the defendant appeared and answered under the authority of the "Sao Vicente", 281 Federal 111, and the "Mormugao", 281 Federal 115. Plaintiff rested.

Defendant offered in evidence testimony and exhibits taken by deposition in the case of Manuel A. Mattes against the same defendant, as proof of the defense of sovereignty of the defendant; that the defendant is a department of the sovereign government of the Republic of Portugal, that the property and steamships of the defendant
18 are the property of that government and that said ships were operated by said government for its own business and benefit. This evidence was received without objection and marked Defendant's Exhibit "A".

Defendant offered in evidence an information, suggestion and petition of the highest diplomatic officer, the Minister of Portugal, appearing specially in behalf of the defendant to object to the jurisdiction of this court over the person or property of the defendant.

The petition was received in evidence without objection and marked Defendant's Exhibit "B".

Plaintiff and defendant both moved for a direction of a verdict in their favor.

Court reserved decision.

March 12th, 1923, the Court rendered an opinion as follows: "I direct a verdict for the plaintiff for the sum of $435. Henry W. Goddard, U. S. D. J." and same was recorded in the clerk's minutes.

On March 13th, 1923, a judgment was entered on the foregoing opinion.

On March 15th, 1923, an assignment of errors and petition for an allowance of an appeal, order of allowance of writ of error, certificate and citation were presented to the trial judge on notice and the petition was granted and the writ of error allowed; certificate and citation signed.

The defendant by His Excellency, Visconde d'Alte, representative of the Government of the Republic of Portugal and of this defendant which is part of said sovereign government, the Envoy Extraordinary and Plenipotentiary Minister of the United States of
19 America, of said government, appearing specially for the purpose of claiming immunity from the jurisdiction of this Court over the Steamship "Goa," the property of the said Portugese Government, and for no other purpose, hereby excepts to the findings, decisions, judgments, decrees and orders of the United States District Court herein on the ground of errors therein, as follows:

1. In that it held that the answers of the defendant herein did not state facts sufficient to institute a defense to the allegations in the complaint herein.

2. In that it held that by appearing in this action and answering the complaint, this defendant had waived its claim to immunity to the process of this Court arising out of its Sovereignty.

3. In that it held that by appearing in this action and answering the complaint, this defendant had waived any claim that this Court did not have jurisdiction herein over this defendant as a Sovereign

Power, or over its property and steamship "Goa," as being owned and operated by it as that sovereign.

4. In that it failed to hold that the defendant as a Sovereign Power or a department of a sovereign government was immune to the process of this Court and that it did not waive any of its rights to suit immunity for itself or its property or any of its rights of sovereignty by its appearing herein by its Consul General or answering the complaint or by any other act.

5. In that it failed to hold that this defendant could properly assert its rights to sovereignty and immunity for itself and its property, to the jurisdiction of this Court at any time during the pendency of this action.

20 6. In that it failed to hold that because the defendant was represented to be a department of the government of the Republic of Portugal, this Court should not and could not take jurisdiction.

7. In that the Court by directing the entry of the judgment herein deprived this defendant of its defense of sovereignty.

8. In that it directed the entry of a final judgment herein in favor of the plaintiff.

9. In that it failed to hold that the defense of sovereignty was a jurisdictional defense which could be asserted at any time and was not waived by a general appearance herein by defendant's Consul General.

10. In that it deprived the defendant of its defense of sovereignty herein.

11. In that the Court failed to dismiss the complaint in the above entitled action against the defendant, on the petition, suggestion and information of its Minister Plenipotentiary, and failed to direct that the plaintiff in the above entitled action file its claim with the Liquidating Commission of the Transportes Maritimos do Estado for payment of all claims against the government of Portugal, in accordance with the law creating said commission.

12. In that the Court held that the said Steamship "Goa" is not immune from its process and jurisdiction.

13. In that the Court held that a general appearance by counsel appearing for the Consul General of the Republic of Portugal was a waiver of immunity from the jurisdiction of this United States Court over the property and the steamships of said Government of Portugal.

The foregoing Bill of Exceptions contains all of the evidence received upon the trial of this action or relating to the foregoing

21 exceptions.

The attorney for the plaintiff in error, the defendant below, having thereupon tendered this as the defendant's Bill of Exceptions to the rulings of the Court upon the trial of this action and having requested that the signature and seal of the trial judge aforesaid should be annexed to the same pursuant to the statute in such case made and provided; and for as much as none of such matters

and exceptions so offered and made to the rulings and directions of said judge, and none of the evidence or other things do appear upon the record of said case, the said judge, pursuant to said request did put his signature and seal to this Bill of Exceptions, this 26th day of March, 1923, and orders the same on file. Henry W. Goddard, United States District Judge, Trial Judge. (Court Seal.)

22 United States District Court, Southern District of New York.

[Title omitted.]

STIPULATION AS TO BILL OF EXCEPTIONS.

L. 23, P. 70.

It is hereby stipulated and agreed that the within amended Bill of Exceptions, signed by the Honorable Henry W. Goddard, March 26, 1923, contains a true abstract of the proceedings had on the trial of the above entitled action, and that the transcripts of the minutes herein attached are true and correct, and the exhibits herein contained are true and correct copies of the exhibits offered and accepted in evidence at the trial of the above entitled action; and that the same are agreed on by the parties hereto for the purpose of this appeal. That defendant's exhibit "A" need not be printed with the record and may be offered to the Appellate Court in its present printed form.

Dated, March 23, 1923. S. B. Axtell, Attorney for Plaintiff. F. Dudley Kohler, Attorney for Defendant.

[Endorsed] United States District Court, Southern District of New York. L. 23, P. 70. Sylvio A. Almeida, Plaintiff, vs. Transportes Maritimos Do Estado, Defendant. Stipulation. F. Dudley Kohler, Attorney for Defendant. — Broadway, New York City.

23 United States District Court, Southern District of New York.

[Title omitted.]

Before Hon. Henry W. Goddard, J., and a Jury of One.

MINUTES OF TRIAL.

[Filed Feby. 23, 1923.]

New York, January 19, 1923.

Appearances:

Silas B. Axtell, Attorney for Plaintiff.
F. Dudley Kohler, Attorney for Defendant.

By consent a jury of one was impaneled and sworn.

Mr. Axtell: Your Honor, I think we can agree to this stipulation of facts: That the plaintiff, one of a crew of the steamship "Goa"

was engaged as a seaman, signing a written agreement which we will put in evidence, on the 28th of January, 1920, at the rate of wages of $75 a month and found, for a return trip to Portugal, to
24 be paid off in New York.

That the ship went over to Portugal and thence to a port in South America. It went to Portugal first and then went off on a side trip, I think to South America, and returned to Lisbon and there discharged the crew, paying them their wages up to the date of the arrival at Lisbon. After that they were left in Lisbon for some time at a place where sailors are accommodated, and their maintenance there was paid and they were shipped back to New York some months later as—you would not consent to the word cargo,—as passengers in the cargo hold of the steamship "Cunene," one of the vessels of the same operators.

On arrival here they were offered a very small and they thought inadequate amount of money and refused to accept it in full for their claim, and this case was brought on behalf of this particular plaintiff, and at the same time a libel was filed on behalf of the rest of the crew, some twenty-five or thirty members.

They received in Portugal some small amount of money in Portuguese currency while in Portugal, and a payment on the boat across the ocean.

It is conceded that in this case if a judgment in any sum is to be rendered for the plaintiff, that the plaintiff in this case should
25 receive $125. He claims $185, but we are allowing for the payments that were made.

The Court: Is that conceded?

Mr. Kohler: Yes.

Mr. Axtell: That being agreed to, all I would offer is the original contract of hiring by the master of the crew, including this plaintiff,—a copy in writing entered into between them and the master, written in Portuguese, the contract being signed at the office of the Portuguese Consul in New York. I have a copy which bears the date of January 27, 1920, but the original is in my safe and it will be here in a minute. I have sent for it. Temporarily I may offer this copy which is a translation which I think will be found correct.

Mr. Kohler: Consented to.

Paper received in evidence and marked Plaintiff's Exhibit 1.

Mr. Axtell: I wish to offer another translated contract which is not between this plaintiff and this defendant, but it is similar in form to one which was given by the master of the ship to the plaintiff in this case. He gave such a contract to each individual seaman, and I believe you are willing, Mr. Kohler, to concede that a similar one may be put in evidence for the purpose of indicating the nature
26 of the contract between the plaintiff and the defendant in this case?

Mr. Kohler: Yes.

Paper received in evidence and marked Plaintiff's Exhibit 2.

The Court: Are these copies in English?

Mr. Axtell: The translations are. We have translations. That I think constitutes the plaintiff's case. We file the original contract and we ask for judgment for the full amount of $425, due to the fact that the defendant appeared and answered, under the authority of the decision of the Circuit Court of Appeals in the case of Sao Vicente, in 281 Federal, 111, and The Murmagao, 281 Federal, 115.

Plaintiff rests.

Mr. Kohler: The defendant appears by attorney, by filing an answer to the complaint, the answer being verified by the Acting Consul General of Portugal, on the 19th of November, 1920. This answer contains an affirmative defense which I will read with the Court's permission:

"Further answering and objecting to the assumption of this court of jurisdiction in this case, the respondent alleges that it is a department of a sovereign foreign government at peace with the
27 United States of America, and allied with the United States in the late world war, and that all the matters set forth in said complaint relate to the internal management of a Portuguese vessel outside the jurisdiction of the United States, and in accordance with the provisions of the Merchants Shipping Act and international comity, the settlement of these matters should be left with the Portuguese Consul at the port of New York."

Further, "The defendant objects and protests to the assumption of jurisdiction by this court and alleges that it is a sovereign allied government at peace with the United States, and that it can not be sued in the courts of the United States without its consent."

The case cited by Mr. Axtell, which is the unanimous opinion of the Circuit Court of Appeals of this district, holds that in the case of the Sao Vicente and The Murmagao, which were both operated by this respondent, the general appearance in court by the respondent was a waiver of any claim of sovereign immunity, and on motion to sustain exception to that affirmative defense, the Court ruled it out, so that judgment was rendered without the respondent having the opportunity to offer proof as to its sovereign character. In this case a commission by order of the Court was sent to Portugal and the testimony of the Director General of this Government
28 Department, the Transportes Maritimos Do Estado, was taken by deposition and the answers are in this record. I have a printed copy of the commission and the return of the commission together with a photographic copy of the law of Portugal which provided for this Government Department to operate its ships in behalf of the Government and on government business. I offer this deposition and testimony in evidence in this case in support of my affirmative defense that the respondent is a department of a foreign sovereign government at peace with the United States under a treaty duly approved and ratified.

The Court: Is that received by consent?

Mr. Axtell: I think the question will have to be raised, and I think

it will be better to have it go in rather than to proceed by objecting to it and having your Honor perhaps sustain the objection and then having the case go up on exceptions which might fluke the whole matter. Sooner or later all this will have to be considered, and we might as well have it in now.

The Court: Received then by consent.

Received in evidence and marked Defendant's Exhibit A.

Mr. Kohler: Referring now to the Sao Vicente, mentioned by Mr. Axtell, which was decided by the Circuit Court of Appeals——

The Court: You are not offering in evidence anything now? Is this a part of your argument?

Mr. Kohler: I want to explain to the Court for its information at this point that this decision of the Circuit Court of Appeals was appealed from, on a writ of certiorari to the Supreme Court, and our reason for appealing was to have a decision as to whether or not the Circuit Court of Appeals was right in holding that the general appearance was a waiver of sovereign immunity. The Appellate Division of the State Court decided that it was not, by unanimous consent, and the case was taken to the Supreme Court in Washington on a writ of certiorari, and when we got there it appeared that the claim to immunity had been brought by the Consul General of this Government in New York, and the Court dismissed the writ of certiorari on that ground, holding that the highest diplomatic officer, namely, the Minister of Portugal, was the proper person to claim sovereign immunity. So in this case I have a claim for sovereign immunity made by the Minister of Portugal which I will offer in evidence. If there is a waiver here this will be ruled out the same as any other objection to jurisdiction.

Mr. Axtell: I think to be consistent I cannot very well object to this under that decision.

The Court: Is it received by consent?

Mr. Axtell: Yes. I am not disposed to be technical in the matter.

Received in evidence and marked Defendant's Exhibit B.

Mr. Kohler: Now we have the third question, whether or not the government waives its immunity by appearing generally. I will make up a record and ask your Honor to certify the question to the Supreme Court direct, because as it is a question of jurisdiction, the appeal must be direct, and will try to get an early decision. I think that is about all there is in the case.

Mr. Axtell: I will ask Mr. Kohler if he has a translation of these photostat copies of statutes?

Mr. Kohler: Yes, they are printed in there. The index explains this. Here is the index. It shows a translation of Exhibit A and B on the different pages.

Mr. Axtell: Point out to the Court and the rest of us what part of this deposition or this group of printed depositions are material in this case.

Mr. Kohler: Yes, the parts which constitute the return of the commission from pages 82 to 92, and 152 to 156, also pages 24
31 to 34 inclusive.

Mr. Axtell: I have this decision in the Vicente and Murmagao cases in 281 Fed., if you wish to read it (handing book to Court).

The Court: This says that immunity is waived by general appearance, does it not?

Mr. Kohler: Yes.

The Court: Is that the main question here?

Mr. Kohler: Yes, it seems to be.

Mr. Axtell: But in their answer they claim immunity at the same time.

Mr. Kohler: Yes. In the case of Beers vs. Arkansas, in the United States Supreme Court, the Chief Justice decided that a sovereign can go into court at any time and withdraw at any time. That is, that a sovereign submitting to the jurisdiction of the Court can withdraw his consent to be sued at any time, and that is one of the questions which the Supreme Court has to decide here, whether having appeared generally he can withdraw after having done that. We claim that he can.

The Court: The facts in the case at bar are similar to the Sao Vicente and The Murmagao cases?

Mr. Kohler: Yes, just the same, a general appearance was made in each case, and a defense of immunity in the answer.

32 The Court: And you appeared, too, in that case, did you not?

Mr. Kohler: Mr. Patterson appeared at that time for the respondent in all these cases. I was substituted in his place.

The Court: You appeared for the appellant?

Mr. Kohler: Yes.

The Court: Would you like to argue any phase of this now?

Mr. Axtell: Well, I don't think there is much to say, except that you will either have to certify this up to the Supreme Court on a question of jurisdiction, or give a judgment for the plaintiff for the sum of $425 and costs, and from that judgment I suppose the defendant would appeal. I do not see that it is really necessary to file briefs or necessary for your Honor to write a long opinion. It seems to me you are compelled almost on the authority of the cases submitted to render judgment for the plaintiff on the facts as we have stipulated them. I suppose I will have to get busy and study the problem and present some sort of a brief.

The Court: I wish you would both give me a short memorandum of your contentions.

Mr. Axtell: All right.

33 The Court: And I suppose you are going to have the testimony for the appeal?

Mr. Kohler: Yes, surely.

The Court: And when that testimony is ready, both please let me have a memorandum of what your contentions are. That will simplify it for me. Is that agreeable to you both.

Mr. Kohler: Yes.

Mr. Axtell: Certainly.

The Court: It seems to me there is only one thing to do, and that is to follow this case.

Mr. Kohler: There are a number of cases in the Supreme Court which hold that a sovereign can withdraw his consent to be sued at any time even after judgment, and it is my contention that those cases will outweigh this decision.

Mr. Axtell: It is stipulated that the deposition taken in the case of Mamel A. Mattes and others against the Transportes Maritimos Do Estado, Admirality No. 74-111, may be read into the record as evidence in this case.

Mr. Kohler: Yes.

Mr. Axtell: I move for the direction of a verdict in favor of the plaintiff.

Mr. Kohler: I move for the direction of a verdict in favor of the defendant.

34 The Court: Decision reserved.

Briefs within one week.

35 EVIDENCE: PLAINTIFF'S EXHIBIT 1.

Translation from Portuguese.

I, Jorge da Silva Duarte, Consul General of Portugal in New York, hereby do certify that in the record of crews kept at this Consulate General, there appears on page 63, an entry reading as follows:

Changes in the Crew-roll of S. S. Goa in the Port of New York from January 10 to January 28, 1920.

Members of the Crew Engaged at This Port.

Serial No.	Class.	Age.	Place of birth.	Name.	Monthly salary.	Date of engagement.
116	Barinpiero	23	Rio Grande Nartes	Manuel A. de Elator	$85	Jan. 26, 1920.
117	Boco	34	Alcantarra	Joan Eugenio	75	" 26, "
118	Deck hand	19	Rio Janeiro	Any Carreia de Sa Antonio Augusto	75	" 23, "
119	"	20	"	Pereira	75	" 22, "
120	"	19	"	Achiles Ealcao Pincheiro	75	" 22, "
121	"	22	Para	Sebastino Da Silva	75	" 22, "
122	"	32	Gardomar	Domingo Ferrera Nevas	75	" 26, "
123	"	25	Permambuco	Silverino da Silva	75	" 26, "
124	Ajudante	19	Arganil	Jose Dias	75	" 24, "
125	Da Cosinta	34	Torres Vedras	Jose d' Almeida	100	" 15, "
126	Oiler	30	Caldas de Rainha	Jose Fernandes Louro	95	" 16, "
127	Oiler	37	Leiria	Illanoil d' Assumpcas	95	" 16, "
128	Oiler	30	Sowel	Joan Francisco Dos Santos	95	" 14, "
129	Stoker	31	Cerveinra	Joan Borges	90	" 15, "
130	Stoker	29	Finchal	Joan Edwardo Sousa	90	" 12, "
131	"	38	Paredes de Coura	Francisco Coutirto dos Arjos	90	" 15, "
132	"	36	Soure	Jose Elades	90	" 12, "
133	"	..	Cerveira	Adelindo Jose Fernandez	90	" 26, "

134	Stoke hold hand	36	Funchal	Victor da Casta	75	"	26,	"
135	"	26	Paredo de Cousa	Arlindo da Cunha	75	"	15,	"
136	"	..	Olinevia	Antonio Ramos	75	"	26,	"
137	"	40	Penacova	Antonio Cardevio	75	"	26,	"
138	"	31	Caminha	Tzelinio Vitar Elatino	75	"	19,	"
139	Boy	..	Lisbon	Alberto Antones	75	"	27,	"
140	Waiter	..	Rio de Janeiro	Silvio A. Almeida	75	"	27,	"
141	"	..	Cadeval	Sebastino Bareia Varzea	75	"	27,	"
142	Baker	..	Brava	Jose el anoil de Jan Gomez	50	"	17,	"
143	Seaman	..	El Exico	Alberto Garcia	85	"	26,	"
144	Seaman	..	Caruna	Jose Pires	85	"	27,	"
145	Seaman	..	S. Vicente	Emanuel Lopez Dias	85	"	23,	"
146	Stoke hold hand	..	Villa Real	Elanuel G. Teixeira	75	"	27,	"

To the members of the crew engaged at the Consulate General of New York there is assured payment of wages at the rate of 60¢ an hour for overtime, the working day to be 8 hours; payment of their salaries in dollars at current exchange rate at Lisbon, and payment of salary during the return voyage until they reach the Port of New York where such salaries will be paid by the Agents of the Transportes Maritimos do Estado in said city, and payment of the return passage to the City of New York to such members of the crew as apply for such passage.

36 As to such members of the crew as are not to be sent back to New York, they shall be disembarked at Lisbon, without payment of the return passage, and without payment of salary for the duration of the return trip to New York.

Consulate General of Port of New York, the 27th of January, 1921. (Signed) Pedro Ferreira Dias de Sousa, Master. The Consul General, By Jose Rocha Pinta, Vice-consul.

This is a true copy. Consulate General of Portugal at New York, January 28, 1921. (Signed) Rocha Pinta, Vice-Consul, and Pedro Ferreira Dias de Sousa, Master.

37 EVIDENCE: PLAINTIFF'S EXHIBIT 2.

Translation from Portuguese.

M. P. M. S.

Contract entered into by the Seaman Manuel Jose Traca, and by the deck hand Antonio Henriques, with Mr. Pedro de Sousa, Master of S. S Goa. The first undertakes to work as seaman and the second undertakes to work as deck hand, both until such time as S. S. Goa reaches the port of Lisbon, Portugal.

The Master undertakes to pay to the first a salary of $95.00 per month, and to the second a salary of $85.00 per month. The Master undertakes to take them back or to pay their passage back to any port of the U. S. of America, their salary to be payable until they reach such American port. (Signed:) Manuel Jose Traca. Antonio Henriques, Pedro de Sousa, Master.

I acknowledge the signatures appearing hereinbefore as being the true and genuine signatures of Manuel Jose Traca, Antonio Henriques, and of Pedro de Sousa, these signatures having been affixed in my presence, to which I certify.

Boston, Mass., at my office, January 7, 1920. The Notaray Public, Joseph Linhares.

38 United States District Court, Southern District of New York.

[Title omitted.]

STIPULATION AS TO TESTIMONY.

It is hereby stipulated and agreed, that the testimony of Antonio Ramos, Antonio Perieri, Achilles Peirheiro, Ary de Sa, Severino de Sylvio, taken on behalf of the libelants in the action entitled Manual F. Mattes et al v. Transportes Maritimos do Estado, pending in this court in admiralty, and the testimony taken on behalf of the respondent, under a Commission issued out of this Court on the 26th day of February, 1921, may be used upon the trial of this action with full force and effect as if it were originally taken in this action.

Dated January 18th, 1923. Silas B. Axtell, Attorney for Plaintiff. F Dudley Kohler, Attorney for Defendant.

(Here follows Defendant's Exhibit A in evidence, being transcript of commission, with return, exhibits, etc.)

United States District Court

SOUTHERN DISTRICT OF NEW YORK.

(Admiralty 74-111.)

MANUEL A. MATTES and others,
Libelants,

against

TRANSPORTES MARITIMOS DO ESTADO,
Respondent.

TRANSCRIPT OF COMMISSION TOGETHER WITH RETURN AND EXHIBITS AND TRANSLATIONS FROM RECORD.

F. DUDLEY KOHLER,
Proctor for Respondent-
Claimant-Appellant,
25 Broadway,
New York City.

PRESS OF FREMONT PAYNE, INC., 80 Washington St., New York City.

Printer's Index (not part of record).

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AMERICAN CONSULAR SERVICE
CONSULATE GENERAL
LISBON, PORTUGAL.

August 30, 1921.

The Clerk of the District Court of the United
States for the Southern District of New York,
Borough of Manhattan,
City of New York,
United States of America.

Sir:

At the request of Frank M. Patterson, Esquire, Counsellor at Law, of 30 Pine Street, New York City, I send you, herewith enclosed, the completed testimony of Senhor Alvaro Augusto Nunes Ribeiro, taken on Commission issued by the Hon. Learned Hand, Judge of the District Court of the United States for the Southern District of New York, at the Borough of Manhattan, City of New York, on the twenty-sixth day of February, 1921, in the case of MATTES vs. TRANSPORTES MARITIMOS DO ESTADO.

I am, Sir,

Very respectfully yours,

W. STANLEY HOLLIS,
American Consul General.

Enclosures:
Completed testimony as mentioned above
File No. 804.5
WSH/FW

The following appears on the envelope:

AMERICAN CONSULAR SERVICE,
LISBON, PORTUGAL. (in left hand corner)
ALEXANDER GILCHRIST ESQUIRE,
Clerk of the District Court of the United States, for the Southern District of New York,
Borough of Manhattan, City of New York.
United States of America.
Estados Unidas do America Norte.
(stamp) Modêlon 13
Lisboa Central,
R—No. 193 3 Portugal.
A—74/111 (written in ink in side)

.....
: A. R. :
.....

On the back of the envelope is written:

Deposited in the Post office at Lisbon, Portugal, this 31st day of August, 1921 by me.

(signed) W. STANLEY HOLLIS,
Commissioner,
American Consul General.

(2 seals of wax containing the American National Seal and the inscription "American Consulate-General, Lisbon, Portugal).

Stamped:
U. S. District Court,
S. D. of N. Y.
Filed Sep. 12. 1921.

.....
: New York, N. Y. :
: 9-12 :
: 1921 :
: Reg'y D. :
.....

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To W. STANLEY HOLLIS,
United States Consul General, Lisbon, or his assistant, deputy or secretary.

GREETING:

KNOW YE, That we, in confidence of your prudence and fidelity, have appointed you Commissioner and by these presents do give you or either of you full power and authority, diligently to examine upon corporal oath, or affirmation, before you to be taken and upon the interrogatories and cross-interrogatories hereunto annexed, Nunes Ribeiro, or in his absence, such other person or official connected with the Portuguese Government who is conversant with the facts and qualified to testify in answer to the questions contained in interrogatories or cross-interrogatories as witness on the part of the respondent in a certain cause now pending undetermined in the District Court of the United States for the Southern District of New York wherein MANUEL A. MATTES and others are libellants and Transportes Maritimos do Estado is respondent.

And we do further empower you,
to examine on the same behalf, and in like manner, any other person or persons who may be produced as witnesses before you; and we do hereby require you the Commissioner
before whom such testimony may be taken to reduce the same to writing, and to close it up under your hand and seal directed to Alexander Gil-

christ, Jr., Clerk of the District Court of the United States for the Southern District of New York, at The City of New York, as soon as may be convenient after the execution of this commission; and that you return the same when executed, as above directed, with the title and Docket number (74/111) of the cause endorsed on the envelope of the commission.

WITNESS, the HON. LEARNED HAND, Judge of the District Court of the United States for the Southern District of New York, at The Borough of Manhattan, City of New York, this 26th day of February in the year of our Lord one thousand nine hundred and twenty-two and of our Independence the one hundred and forty-fifth.

(signed) ALEX. GILCHRIST, Jr.,
Clerk of the District Court of the United States
(Seal) for the Southern District of New York.

DIRECTIONS FOR EXECUTING THE COMMISSION

Extract from the Code of Civil Procedure of the State of New York relating to Depositions taken without the State for use within the State.

§ 901. The person to whom a commission is directed or before whom a deposition is taken unless otherwise expressly directed in the commission, or in the order for taking the depositions, must execute the commission, or the order, as follows:

1. He must publicly administer, to each witness examined, an oath or affirmation to testify the truth, the whole truth, and nothing but the truth,

as to the matters respecting which the witness is to be examined.

2. He must reduce the examination of each witness to writing, or cause it to be reduced to writing, by a disinterested person. After it has been carefully read, to or by the witness, it must be subscribed by the witness.

3. If an exhibit is produced and proved, the exhibit, or, if the witness, or other person having it in his custody, does not surrender it, a copy thereof, must be annexed to the deposition to which it relates, subscribed by the witness proving it, and numbered or otherwise identified, in writing thereupon, by the commissioner, or person taking the deposition, who must subscribe his name thereto.

4. The commissioner, or person taking the deposition, must subscribe his name to each half sheet of the deposition; he must annex all the depositions and exhibits to the commission, or to a certified copy of the order, for taking the deposition, with the certificate specified in the next section; and he must close them up under his seal, and address the packet to the clerk of the court, at his official residence.

5. If there is a direction on the commission or in the order, to return the same through the post-office, he must immediately deposit the packet, so addressed, in the post-office, and pay the postage thereon.

6. If there is a direction on the commission, or in the order, to return the same by an agent of the party, at whose instance it was issued or granted, the packet so addressed must be delivered to the agent.

7. Where a commission is directed to two or more persons, one or more of them may execute it, as prescribed in this and the next section.

A copy of this and of the next section must be annexed to each commission, or order to take depositions, authorized by this article.

§ 902. The commisioner or other person, before whom one or more depositions are taken, must subscribe, and annex to each deposition, a certificate substantially in the following form, the blanks being properly filled up:

"State" (or "Territory") "of ....."
"County" (or "Parish") "of....." } ss.:

"I,
do certify that
the witness, personally appeared before me on the
day of
at o'clock in the noon,
at the , in the State (or "Territory") of and after being sworn, to testify the truth, the whole truth, and nothing but the truth, did depose to the matters contained in the foregoing deposition, and did, in my presence, subscribe the same, and indorse the exhibits annexed thereto. And I further certify that I have subscribed my name to each half-sheet thereof, and to each exhibit. And I further certify that
appeared in behalf of the and
that appeared in behalf
of the .

The execution of this Commission appears in certain schedules hereunto annexed.

.....Commissioner.

FURTHER INSTRUCTIONS TO COMMISSIONERS

Annexed to the commission is an extract from the Statutes of the State of New York, relative to the taking of testimony out of the State, which extract is directed by law to be annexed to the Commission. But as it does not comprise everything necessary to be attended to by the Commissioners, they are requested to observe the following more ample

INSTRUCTIONS:

I. All the Commissioners named in the Commission should have notice of the time and place of executing it; and if any of them do not act, let the fact that they were notified, or could not be notified, and the reasons for their not acting be stated.

II. The Commission must be executed by the *Commissioner* named therein.

III. The acting *Commissioner* will examine the witnesses separately, after publicly administering to them the following oath of affirmation:

"*You do swear* that the answers which shall be given by you to interrogatories proposed to you shall be the truth, the whole truth, and nothing but the truth. *So help you God.*"

The oath shall be administered (except in cases hereinafter mentioned) by the witness laying his hand upon and kissing the Gospels.

But if the witness shall desire it, he shall be permitted to swear in the following form: "*You do swear, in the presence of the ever living God*," and while so swearing he may or may not hold up his hand, in his discretion.

Or, if the witness shall declare that he has conscientious scruples against taking an oath or swearing in any form, he shall be permitted to make this affirmation in the following form: "*You do solemnly, sincerely and truly declare and affirm*," omitting the words, "So help me God."

IV. The general style or title of the depositions must be drawn up in the following manner:

"Depositions of *witnesses*, produced, *sworn* (or *affirmed*) and examined, the day of in the year one thousand nine hundred and at under and by virtue of a Commission issued out of the District Court of the United States for the Southern District of New York, in a certain cause therein depending and at issue, wherein plaintiff and defendant as follows:

A. B. of (*insert his place of residence and occupation*), aged years and upwards being duly and publicly *sworn* (or *affirmed*), pursuant to the directions hereto annexed, and examined on the part of the doth depose and say as follows: First—*To the first interrogatory he saith*, &c., [Insert the witness's answer.] Second—*To the second interrogatory he saith*, &c., and so on throughout.

If he cannot answer let him say that *he knoweth not*.

V. If there be any cross-interrogatories, the witness will go on thus:

First—*To the first cross-interrogatory he saith*, &c., and so on throughout.

VI. When the witness has finished his deposition, let him subscribe it, and the acting Commissioner will certify as follows:

Examination taken, reduced to writing and by the witness subscribed and sworn to, this day of 19 before

Commissioner.

VII. If any papers or exhibits are produced and proved, they must be annexed to the depositions in which they are referred to, and be subscribed to by the witness, and be endorsed by the acting Commissioners, in this manner.

"At the execution of a Commission for the examination of witnesses, wherein

this paper writing was produced and shown to (*insert the witness's name*) and by him deposed unto at the time of his examination, before

.....*Commissioner.*

VIII. The acting Commissioners shall sign their names to each half sheet of the depositions and exhibits.

IX. If an interpreter is employed, one of the Commissioners will administer to him the following oath, and certify thereto:

"You do solemnly swear, that you will truly and faithfully interpret the oath and interrogatories to be administered to a witness now to be examined, out of the English language into the language, and that you will truly and faithfully interpret the answer of the said thereto out of the language into the English language."

Let the depositions be subscribed by the interpreter, as well as by witness, and certified by the acting Commissioners, as follows:

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness, this day of 19 before

Commissioner.

X. The *Commissioner* will make return on the back of the Commission by endorsement, thus:

"The execution of this Commission appears in certain schedules hereunto annexed."

.....*Commissioner.*

XI. The depositions and exhibits (if any) must be annexed to the Commission, and then the Commission, the directions, interrogatories, cross-inter-

rogatories, depositions and exhibits, must be folded into a packet and bound with tape. The acting Commissioners are to set their seal at the several meetings or crossings of the tape, endorse their names on the outside, and direct it thus:

U. S. DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

vs.

To Esquire,
Clerk of the United States District Court for the Southern District of New York, Borough of Manhattan, City of New York.

XII. When the Commission is thus executed, made up and directed, it must be returned in the manner specified in the direction of the Commission, if there be any.

XIII. If there be no direction on the Commission specifying the manner in which it is to be returned, then it must either be delivered to the Court *by one of the acting Commissioners personally*, or else be forwarded by some person coming to this place, who must be liable, on his arrival, to make oath, before one of the Judges or the Clerk of the Court:

> "That he received the same from the hands of A. B., one of the Commissioners, and that it had not been opened or altered since he so received it."

XIV. In case of returning the Commission by mail, it is to be deposited by one of the acting Commissioners in the nearest post office, he making the following endorsement thereon:

"Deposited in the post office at this day of 19 , by me,

Commissioner."

In case of returning the Commission by a vessel, it is to be deposited by one of the acting Commissioners in the letter bag of such vessel, he making upon the Commission the following endorsement:

"Deposited in the letter bag of the now lying at and bound for the port of New York, this day of 19 , by me,

Commissioner."

The Commissioners are requested to be very careful to observe the foregoing instructions, as the smallest variance may vitiate the execution of the Commission.

If the Commission be returned by an agent, let him be instructed to call on his arrival at this place upon the clerk of the U. S. District Court, Southern District of New York, who will direct him as to its delivery.

(Endorsement on Cover)

A. 74—111

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK.

MANUEL A. MATTES and others,
Libelants,

against

TRANSPORTES MARITIMOS DO ESTADO,
Respondent.

COMMISSION

FRANK M. PATTERSON,
Attorney for Respondent,
Office and Post Office Address,
30 Pine Street,
Borough of Manhattan,
City of New York.

(STAMP)
U. S. District Court
Filed Sep 12 1921
S. D. of N. Y.

The execution of this commission appears in certain schedules hereunto annexed.

(signed) W. STANLEY HOLLIS,
Commissioner,
Consul General of the
United States of America.

CONSULATE GENERAL OF THE
UNITED STATES OF AMERICA,
Lisbon, Portugal.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this first day of June, 1921, before W. Stanley Hollis, Consul General of the United States of America.

Lisbon, Portugal,
Consulate General of the
United States of America. } ss.:

I, W. Stanley Hollis, Consul General of the United States of America, do certify that Alvaro Augusto Nunes Ribeiro, the witness personally appeared before me on the first day of June, at 4 o'clock in the afternoon, at my office in the City of Lisbon, Portugal, and after being sworn to testify the truth, the whole truth and nothing but the truth, did depose to the matters contained in the foregoing deposition, and did, in my presence, subscribe the same, and endorse the exhibits annexed thereto. The execution of this commission appears in certain schedules hereunto annexed.

(Signed) W. STANLEY HOLLIS,
Consul General of the
United States of America,
Lisbon, Portugal.

(SEAL) Service No. 923.
Fee $15.00
(3 fee stamps attached)

The following written on each stamp:
American Consular Service
$5.
Fee Stamp.

And written across the stamp in ink the following:

R. S. C. Lisbon, Aug. 30, 1921.

At a Term of the United States District Court held in and for the Southern District of New York at the Court House of New York, on the 11th day of January, 1921.

71-111

Present—Hon. AUGUSTUS N. HAND, Judge.

MANUEL A. MATTES, et al.,
Libellants,
against
TRANSPORTES MARITIMOS DO ESTADO,
Respondent.

Copy of Order.

Upon the pleadings in this action and the affidavit of Howard C. Lake, verified the 6th day of January, 1921, and the order to show cause, dated the same day, and the said motion having come on duly to be heard on the 7th day of January, 1921, and after hearing Howard C. Lake, of counsel for respondent, in support of said motion, and Silas B. Axtell, counsel for libellants, in opposition thereto, and it appearing to my satisfaction that the proctor for the libellants has not stipulated that the respondent is a department of the Portuguese Government, and due deliberation having been had,

NOW, on motion of Frank M. Patterson, proctor for respondent, it is

ORDERED that a commission issue in this action directed to W. Stanley Hollis, United States

Consul General in Lisbon, Portugal, or his assistant, deputy or secretary, to examine, under oath, on interrogatories to be thereto annexed, Nunes Ribeiro, a witness on behalf of the respondent, or in his absence, such other person or official connected with the Portuguese Government who is conversant with the facts and qualified to testify in answer to the questions to be contained in the interrogatories and cross-interrogatories, and that the libellants be at liberty to join in said commission, and it is further

ORDERED that the said commission be executed at such time and place as may be appointed upon notice of the witness, and the questions contained in the interrogatories and cross-interrogatories and the answers of the witness thereto may be taken down either in writing by the said Consul, his assistant, deputy or secretary, or by some one whom he may appoint for that purpose, or may be taken down in short hand in the presence of said Consul, his assistant, deputy or secretary, by a stenographer and may be transcribed from the stenographic notes so taken and a typewritten copy made thereof; and it is further

ORDERED that the said United States Consul, his assistant, or deputy administer the oath to the said witness and take and certify the deposition with all possible speed and return the said deposition, together with any documentary evidence which may be attached thereto, by mail in a sealed envelope, addressed to the Clerk of the United States District Court, Southern District of New York, Borough of Manhattan, New York City; and it is further

ORDERED that the interrogatories and cross-interrogatories, together with the order authorizing the taking of this deposition or copies thereof, be sent by mail to the said United States Consul at Lisbon, Portugal, by the proctor for the respondent; and it is further

ORDERED that all proceedings in this action be, and the same hereby are stayed until three days after the return of the aforesaid commission, and its receipt by the Clerk of this Court.

AUGUSTUS N. HAND,
U. S. D. J.

A True copy.

ALEX. GILCHRIST, JR.,
(Seal) Clerk.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MANUEL MATTES, et al.,
Libellants,
against
TRANSPORTES MARITIMOS DO ESTADO,
Respondent.

Interrogatories to be propounded to the witness to be examined in Lisbon, Portugal, under a commission to be issued under an order in the above entitled action recently made by Hon. Augustus N. Hand, District Judge, proposed on behalf of the respondent.

First Question: What is your full name?

Second Question: Where do you reside?

Third Question: What, if any, office do you hold under the Portuguese Government?

Fourth Question: How long have you held such office?

Fifth Question: What are your duties?

Sixth Question: What is the Transportes Maritimos do Estado?

Seventh Question: Is Transportes Maritimos do Estado a department of the Government of Portugal? If so affix certified copies of all documents showing this fact.

Eighth Question: When was Transportes Maritimos do Estado created? If by public decree affix copy of same.

Ninth Question: By whom is Transportes Maritimos do Estado controlled?

Tenth Question: For what purpose is Transportes Maritimos do Estado conducted and operated?

Eleventh Question: Does Transportes Maritimos do Estado operate ships?

Twelfth Question: When and under what circumstances were the ships acquired?

Thirteenth Question: Was the steamship "Goa" operated by Transportes Maritimos do Estado in 1920?

Fourteenth Question: Was the steamship "Cuene" operated by Transportes Maritimos do Estado in 1920?

Fifteenth Question: Who was the captain of the "Goa" the first part of 1920?

Sixteenth Question: Where is he now?

Seventeenth Question: Who was the captain of the "Cuene" the first part of 1920?

Eighteenth Question: Where is he now?

Nineteenth Question: What provision is made by the government of Portugal for the presentation

and determination of sailors' claims for wages? Answer fully and affix copies of any documents supporting the answer.

Twentieth Question: Are the ships operated primarily for the use and benefit of the government?

Twenty-first Question: What are the principal cargoes carried in the ships of the Transportes Maritimos do Estado from Portugal to the United States?

Twenty-second Question: What are the principal cargoes carried in the ships of the Transportes Maritimos do Estado from the United States to Portugal?

Twenty-third Question: Under what circumstances do the ships carry freight for other than governmental purposes?

Twenty-fourth Question: State generally any fact or circumstance not heretofore covered in your answers to the foregoing interrogatories, which you may know concerning the questions whether or not the Transportes Maritimos do Estado is a department of the Government of Portugal?

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MANUEL A. MATTES, et al.,
Libellants,
against
TRANSPORTES MARITIMOS DO ESTADO,
Respondent.

Cross-interrogatories to be propounded to Nunes Ribeiro in Lisbon, Portugal, before W. Stanley Hollis, United States Consul General, under an order in the above entitled action made by Honorable Augustus N. Hand, District Judge, 1921, proposed on behalf of the libellants.

CROSS-INTERROGATORIES.

First: In answer to the 7th and 8th questions propounded by the respondent, and when affixing certified copies of all documents and decrees, see to it that they are properly authenticated.

Second: In answer to the 11th question propounded by the respondent, state, if you know, the number and names of the ships operated by respondent herein?

Third: State the name of the captain of the "Goa" the first part of 1920, by whom he was employed, who paid his wages, and from whom he received his orders?

Fourth: If you are an attorney and counselor-at-law or a person authorized by the laws of Portugal to act in that capacity, and if you answer the 19th question of the respondent's proposed interrogatories, state, if you know, whether claims for seamen for wages against the "Goa" or other vessels operated and controlled by the respondents herein, have been or are being commenced and litigated in the courts of Portugal, and if so, in what courts, and state their jurisdiction?

Fifth: Has the Transportes Maritimos do Estado any capital stock or shares of stock in its treasury or outstanding and in the hands of various persons?

Sixth: Are the shares of stock of the respondent herein sold, traded or assigned, and what is their par value and what is their present market value?

Seventh: How many stockholders are there, if you know, and how many directors and officers are there, and their names and positions?

Eighth: If you answer the 20th question of the respondent's interrogatory in the affirmative, state what you mean, that is, what becomes of the funds derived and obtained from the operation and control of these vessels and how are they disbursed?

Fourteenth: Was the captain of the steamship "Goa" in the employ of the Portuguese Government or its naval forces at the time he was said master?

SILAS B. AXTELL,
Proctor for Libellants,
Office and P. O. Address,
No. 9 State Street,
Borough of Manhattan,
City of New York.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MANUEL A. MATTES, et al.,
Libellants,
against
TRANSPORTES MARITIMOS DO ESTADO,
Respondent.

Answers of the witness Alvaro Augusto Nunes Ribeiro examined this first day of June, 1921, before W. Stanley Hollis, United States Consul General at Lisbon, Portugal, pursuant to an Order of the United States District Court, Southern District of New York, made by Honorable Augustus N. Hand, a Judge of said Court, dated February 11, 1921.

To the first interrogatory, he answers:

Alvaro Augusto Nunes Ribeiro.

To the second interrogatory, he answers:

Lisbon, Portugal.

To the third interrogatory, he answers:

Director of Transportes Maritimos do Estado under the Portuguese Government.

To the fourth interrogatory, he answers:

Since the 12th of May, 1919.

To the fifth interrogatory, he answers:

Director of all services.

To the sixth interrogatory, he answers:

It is intended for the operation of all steamers seized from several German companies during the war, and considered as good prize of war by the Naval Court.

To the seventh interrogatory, he answers:

Yes. It is a department of the Government of Portugal.

TEXT OF GOVERNMENT DECREE
NO. 5,564 annexed,
ENCLOSURE "A."

In margin is written:
W. STANLEY HOLLIS,
Consul General.

(signed)
ALVARO AUGUSTO NUNES RIBEIRO.
(at bottom of page)

(New page) con't.

To the eighth interrogatory, he answers:

On February 24, 1916. Text of Government decree No. 2,236, annexed, Enclosure "B."

To the ninth interrogatory, he answers:

Directly by the Ministry of Commerce of Portugal.

To the tenth interrogatory, he answers:

The Transportes Maritimos do Estado is conducted with the aim of establishing lines for commercial and passenger services.

To the eleventh interrogatory, he answers:

Yes.

To the twelfth interrogatory, he answers:

They were German steamers interned in Portugal ports during the war and were requisitioned under the terms of Decree No. 2,236, of February 24, 1916.

To the thirteenth interrogatory, he answers:

Yes.

To the fourteenth interrogatory, he answers:

Yes.

To the fifteenth interrogatory, he answers:

Pedro Ferreira Dias de Sousa.

To the sixteenth interrogatory, he answers:

Captain of the steamer "Lima" now at Antwerp.

To the seventeenth interrogatory, he answers:

Jara de Carvalho.

To the eighteenth interrogatory, he answers:

Captain of the same steamer in England.

To the nineteenth interrogatory, he answers:

The Portuguese naval authorities in all Portuguese harbors determine and pay what wages are due.

(Signed)
ALVARO AUGUSTO NUNES RIBEIRO.

(Signed) W. STANLEY HOLLIS (in margin)
Consul General.

To the twentieth interrogatory, he answers:

Yes.

To the twenty-first interrogatory, he answers:

Corkwood, sardines and other food-stuffs.

To the twenty-second interrogatory, he answers:

General cargo, coal, petrol, and fuel oils, etc.

To the twenty-third interrogatory, he answers:

When our ships have not full cargoes for the Portuguese Government, the vacant spact is at the disposal of shippers.

To the twenty-fourth interrogatory, he answers:

He has nothing further to say.

(signed)
ALVARO AUGUSTO NUNES RIBEIRO.
(at bottom of page)

(signed) W. STANLEY HOLLIS,
Consul General (In margin).

New page.

To the first cross-interrogatory, he answers:

I affix authenticated copies of the Diario do Governo, marked A and B, containing the decrees referred to.

To the second cross-interrogatory, he answers:

Yes.

To the third cross-interrogatory, he answers:

Pedro Ferreira Dias de Sousa. He was employed by the Portuguese Government. His wages were paid by the Transportes Maritimos do Estado, and he received his orders from me.

To the fourth cross-interrogatory, he answers:

That he is not an attorney and counselor at law, or a person authorized by the laws of Portugal to act in that capacity and that therefore he sayeth not.

(signed)

ALVARO AUGUSTO NUNES RIBEIRO.

(at bottom of page)

(signed) W. STANLEY HOLLIS,
Consul General (In margin) also in left-hand margin.

New Page

To the fifth cross-interrogatory, he answers:

No.

To the sixth cross-interrogatory, he answers:

There are no shares of stock.

To the seventh cross-interrogatory, he answers:

There are no stockholders. I am the only director, and there are no other officers.

To the eighth cross-interrogatory, he answers:

The funds obtained from the operation and control of these vessels are used up entirely in the paying of the expenses of their operation. The funds are disbursed in the form of cash and checks.

(signed)

ALVARO AUGUSTO NUNES RIBEIRO.
(At bottom of page)

(Signed) W. STANLEY HOLLIS,
Consul General (at bottom of page).

New Page

To the fourteenth cross-interrogatory, he answers:

Yes.

(signed)
ALVARO AUGUSTO NUNES RIBEIRO.
(At bottom of page)
(signature repeated written in red ink.)

Examination taken, reduced to writing, and by witness subscribed and sworn to this first day of June, 1921.

(Signed) W. STANLEY HOLLIS,
Consul General of the United States
of America at Lisbon, Portugal

Consulate General of the
United States of America,
Lisbon, Portugal.

June 1, 1921.

At the execution of a commission for the examination of a witness wherein Alvaro Augusto Nunes Ribeiro appeared, these two annexed documents "DIARIO DO GOVERNO" No. 98 of May 10, 1919, and No. 35 of February 24, 1916, were produced and shown to the said Alvaro Augusto Nunes Ribeiro and by him deposed unto at the time of his examination before me, and by my orders the attached authorization of these documents was obtained from the Portuguese Ministery of Foreign Affairs.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of this Consulate General this 6th day of June, 1921.

(signed) W. STANLEY HOLLIS,
Consul General of the
United States of America.

(SEAL)

I, W. Stanley Hollis, Consul General of the United States of America, do hereby certify that the signature of ANTONIO DUARTE DE OLIVEIRA SOARES is his true and genuine signature over the official seal of his Department and that he is the Acting Director General of the Portu-

guese Ministry of Foreign Affairs and that his signature as such is entitled to full faith and credit.

Witness my hand and seal this sixth day of June, 1921.

(Signed) W. STANLEY HOLLIS,
Consul General of the
United States of America.

(SEAL)

(The following certificate written in the Portuguese language is translated into the English language below.)

MINISTERIO
dos
NEGOCIOS ESTRANGEIROS

Direccao Geral
dos Negocios Comerciaes
e Consulares

—Reparticao
Processo no.—

Certifico que os dois numeros juntos com as letras *A* e *B* Nros. 98 e 35 do *Diario do Governo* sao números autenticos desse diário, sonde o Governo faz publicar todas as leis, decretos e portarias.

Ministério dos Negócios Estrangeiros, em 3 de Junho de 1921.

O Director Geral Interino

(Signed) ANTONIO DUARTE DE OLIVEIRA SOARES

(SEAL)

I. W. Stanley Hollis, Consul General of the United States of America, do hereby certify that the signature of ANTONIO DUARTE DE OLIVEIRA SOARES is his true and genuine signature over the official seal of his Department and that he is the Acting Director General of the Portuguese Ministry of Foreign Affairs and that his signature as such is entitled to fall faith and credit.

Witness my hand and seal this sixth day of June, 1921.

(Signed) W. STANLEY HOLLIS,
Consul General of the United States of America
(SEAL)

(TRANSLATION.)

Ministry
of
Foreign Affairs.

General Direction
of Commercial and
Consular Affairs

—Department
Process No.—

I hereby certify that both attached copies marked letters *A* and *B* Nos. 98 and 35 of the *Government Daily Record*, are the authentic issue of this daily record, wherein the Government publishes all its laws, decrees and ministerial decrees.

Ministry of Foreign Affairs, the 3rd day of June, 1921.

THE ACTING DIRECTOR GENERAL,
(Signed) ANTONIO DUARTE DE OLIVEIRA SOARES.

(Seal of Ministry of)
(Foreign Affairs.)

(Translation made by Lillian Adela Rockett, whose affidavit follows.)

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MANUEL A. MATTES, et al.,
Libellants,
against
TRANSPORTES MARITIMOS DO ESTADO,
Respondent.

L. 74, p. 111.

Lillian Adela Rockett being duly sworn, says: That she resides in the City of New Rochelle, County of Westchester, State of New York.

That she is the person mentioned in the stipulation made by counsel herein dated, New York, July 15, 1922, in which it was agreed that the return upon the Commission hereinafter mentioned may be translated by her. That she is the official translator and interpreter of the Consulate-General of

Spain in the City of New York and she is well educated in the Spanish and Portuguese and English languages.

That deponent received the Commission herein and the documents returned therewith from F. Dudley Kohler, Esq., proctor for the Respondent herein on the 17th day of July, 1922, for the purpose of correctly and accurately translating the parts of the same, which are written in the Portuguese language, to the English language.

That deponent thereupon immediately and to the best of her ability translated each and every word and phrase in the said Commission and return thereon which was in the Portuguese language, into the English language.

That deponent knows the said translation to be a true accurate and correct translation. That deponent this day completed said translation.

LILLIAN A. ROCKETT.

Sworn to before me this
24th day of August, 1922.

MAMIE SCHOMECK,
Notary Public,
New York County,
New York Co. Clerk's No. 688, Reg. No. 4425;
Commission expires March 30, 1924.
(Seal)

NOTE: The following is a translation of the enclosed exhibits returned with the commission herein, photographic copies of which follow this translation.

Saturday, May 10th, 1919. Series1—Number 98.

GOVERNMENT DAILY RECORD.

(Seal of Portuguese Government)

Price of this number 18 (Centavos).

All correspondence, whether official or in relation to subscriptions for the Government Daily Record or announcements for publication must be addressed to the General Direction of the National Printery, as well as for periodicals which are part of this newspaper.

Subscriptions:

The 3 Series	Yearly	24$:	Semester	12$50
Series No. 1	"	11$:	"	6$00
Series No. 2	"	9$:	"	5$00
Series No. 3	"	7$:	"	3$50

Loose Pages: Number of two pages, $05 more than two pages, $03 for each two pages or fraction.

The prices for notices is $24 a line, increasing from $01 (5) for impression of each line, and these must come accompanied by their respective amounts. The literary publications of which two copies are received, will be published gratuitously.

SUMMARY:

MINISTRY OF THE PRESIDENCY.

Decree No. 5:553—resolving that all Civil Service Employees of the different departments in the service of the State, who have the necessary qualifications for immediate advancement of position by seniority or by competition, but because at the time they were under military service and were unable to appear at the tests, are from now on considered in the same condition of competency as those who were free from the military life and were unable to be present at these tests, and were accepted.

MINISTRY OF THE INTERIOR.

NEW PUBLICATION, ratifies decree No. 5:526, published in the Government Daily Record, No. 97, of the 9th of May, 1919, which has raised the salaries and annual stipends for the presidents and effective officials of the Supreme Court of Administration equal to those of the President and Judges of the Supreme Court of Justice.

MINISTRY OF JUSTICE AND WORSHIP.

Decree No. 5:554—introducing several dispositions in reference to judicial expenses.

Decree No. 5:555—discontinuing the services in charge of the Public Ministry in the Commercial Courts of Lisbon.

MINISTRY OF THE NAVY.

Decree No. 5:556—augmenting the list of auxiliary officers of the navy with ten more marine-guards.

MINISTRY OF COLONIES.

Decree No. 5:557—resolving that the offices of the Ministry of Colonies together with those of the Council for the Colonies operate an exclusive office called Offices of the Colonial Council, regulating its system and operation.

MINISTRY OF PUBLIC INSTRUCTION.

Decree No. 5:558—authorizing the Government to contract a loan with the Bank of General Deposits for 500,000$ for the acquisition of land and for the construction of an edifice for a Superior School of Pharmacy in Lisbon and for the acquisition of school equipments and furniture.

Decree No. 5:559—authorizng the Government to contract a loan with the Bank of General Deposits for 250,000$ for the completion of the edifice for the Primary Normal School of Lisbon.

Decree No. 5:560—to consider as gratification the remuneration given to the professors of the Medical University for services rendered in school clinics and for those special subjects which are under their charge.

NEW PUBLICATIONS: Ratified those of Art. 2 in decree 5:491, published in the Government Daily Record, which adpusted the arrangement of group 6, in Science of Phylosophy of the Law School of the Universities of Lisbon and Coimbra.

Decree No. 5:561 authorizing the transfer of the estimate for the Ministry of Public Instruc-

tion for the current fiscal year for the sum of 4,500$, corresponding to the twelfth of April and June of 1919, as the revenue assigned for the services of the Institute of Colonial Missions, inscribed in Chapter 4, Art. 40, for ordinary estimates for the Ministry of the Colonies, under the orders for the years 1918-1919.

Decree No. 5:562, Opening a credit for the sum of 64,300$ to re-inforce the different estimates, listed for distribution for the expenses of the Ministry of Public Instruction, authorized for the fiscal year of 1918-1919.

Decree No. 5:563 opening a special credit for the sum of 15,100$ alloted to meet the salaries due to the personnel listed in the Visiting Schools, together with the costs and disbursements of transportation for the inspectors of the same schools, during the fiscal year of 1918-1919.

MINISTRY OF PUBLIC WORKS.

Ministerial Decree No. 1:772—refusing the petition for a concession for mineral waters made by the Company of Mineral Waters of Melgaco, Ltd., and it is resolved that the new springs called Fonte Do Pego which are State property be employed usefully by the Administration Council of the Laborer's District.

MINISTRY OF SUPPLIES.

Decree No. 5:564—including the reorganization of the "TRANSPORTES MARITIMOS."

Decree No. 5:565—establishing that it be fixed by ordinance of the Ministry of Supplies the different prices of prime necessities.

Decree No. 5:566—abolishing the exportation over-tax of $50 per kilogram of paper.

Decree No. 5:567 adjourning the resolutions in Art. 3 and the only one of Art. 11 in decree No. 4:950, published in the Government Daily Record No. 88, of the 28th of April, 1919, which returned free to commerce and for transportation of corn and rye, barley and the milling products of these cereals.

RATIFIED: decree No. 5:513, and published in the Government Daily Record No. 94, of the 6th of May, 1919, which introduced several resolutions pertaining to the stimulation of the interests of the Colonies supplying oleaginous substances as a national industry.

Ministerial Decree No. 1:774, naming the goods which continue to be dependent on the license of the DIRECCAO GERAL DO COMERCIO EXTERNO for exportation and re-exportation to the Portugese Colonies.

NOTICE.—There was published two Supplements of the Government Daily Record No. 97, of the 9th day of May, 1919 including the following documents:

1st. Supplement.

MINISTRY OF THE INTERIOR.

Decree No. 5:549—adjourning until June 1st, 1919 as the day for the election of Senators and

Deputies for the District of Ponta Delgada, which had been fixed for the 11th day of May of this year.

MINISTRY OF PUBLIC INSTRUCTION.

Decree No. 5:550—posting the list of payments to the teaching personnel of the Universities of Coimbra, Lisbon and Porto, and their respective Colleges, Schools and Institutes.

(Signed by) W. Stanley Hollis, Consul General.
" Alvaro Augusto Nunes Ribeiro.

2nd Supplement

MINISTRY OF THE INTERIOR.

Decree No. 5:551 assigning the number of electionering meetings for the Council of Sousel.

Decree No. 5:552—authorizing the Chamber of the Municipal Council of Vila Nova de Gaia to collect half a mil for each litre of wine consumed and one mil for each litre of spirituous wines exported by the referred Council by water or land routes.

MINISTRY OF THE PRESIDENCY.

Decree No. 5:553.

Considering that during the war period the Nation had to resort for a great number of its public

employees among its citizens who, as simple soldiers or as officers of the militia, constituted its army;

Considering that the whole country has the moral obligation not to forget to make sacrifices, of every kind, for their fellow-citizens and therefore complying with their duties;

Considering that, to help and not to forsake, when on returning to their homes, every citizen, especially civil employees, whose lives or careers were affected by their help to the cause of the Republic, Country and Humanity, is to continue to stimulate the love for their native land and maintain a gratitude for the Country that every one of its sons should have;

Considering that one of the best ways to arouse this gratitude is to place, at the very least, these employees under the same circumstances as those who for some reasons could not give their share of help to the army; or those who complied with their military duties, and who in returning were not in condition to continue with the fulfilling of their functions, because incapacitated by the vicisitudes and contingencies of their campaign and because of their services to the army, where some of them remained a long time completely separated from the surroundings of the positions which they occupied during peace time;

Considering that during the length of time which the mobilization of the army lasted, competitive contests were held for the different lists of public

civil service positions, and in which many individuals were unable to partake in because of these conditions, and who found themselves far from their offices;

Considering finally, that those who helped their country with their services, cannot be blamed for these conditions, nor are they in a situation to confront those who peacefully were able to continue without a change in their lives, they will be allowed to qualify for these contests and tests which in most cases demand a long preparation, a great amount of energy, unlimited studies, time and tranquility of life.

It is convenient, under the proposal of the President of the Cabinet and Ministers of the Interior and Ministers of the different other departments, that it may have the powers of law to decree the following:

Article 1st. The Civil Service Employees of the different departments in the service of the State, who meet all the requirements necessary for immediate advancement of position by seniority or by competition, but because of the time that they were under military service they were unable to appear at the contests, are from now on considered in the same condition of competency as those who were free from the military life and were able to be present at these tests, and who passed and who were accepted.

only insertion—Included in the dispositions of this article are all officials who return to the employment of

their positions four months before the opening of the contests, and who have at the very least, six months of consecutive military service to their credit.

Art. 2. The officials which are comprised in the above or in its paragraph shall be placed at the end of the list and classified as approved candidates as per seniority, and cannot be promoted before all those who entered the contents, but shall be entered in their respective lists according to vacancies occuring, and will simultaneously be promoted after the last candidate classified.

Art. 3. After the termination of the valid time set for the contents, always with the understanding that all candidates to the contests have been promoted, then will all officials be promoted who are comprised in the dispositions of this decree, their names being affixed in the respective lists and filling the vacancies as they occur, giving preference to the oldest.

Art. 4. Agreed to revoke all former legislation to the contrary

It is resolved, therefore, that the authorities must comply and put into execution the present decree as law, to obey, to have this obeyed and protected as completely and fully as it is here contained.

The President of the Cabinet, Minister of the Interior and Ministers of all other departments make this public. Government House of the Republic, May 10th, 1919.

JOAO DU CANTO E CASTRO SILVA ANTUNES—Domingos Leite Pereira—Antonio Joaquim Granjo—Amilcar da Silva Ramada Curto—Antonio Maria Baptista—Vitor Jose de Deus de Macedo Pinto—Xavier da Silva Juinor—Julio de Patrocinio Martins—Jodo Lopes Soares—Leonardo Jose Coimbra— Jorge de Vasconcelos Nunes—Luis de Brito Guimardes

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MINISTRY OF THE INTERIOR.

General Offices of Public Administration.

This having been published with inaccuracies, the following decree is published once again.

Decree No. 5:526.

Considering that when the Political State Council, in 1870, was separated from the State Administration Council, who together formed the Supreme Administration Court, it was assigned to each one of them the sum of 1600$ as salary to each of the officials, and as awarded in 1836 as salaries for Judges of the Supreme Court of Justice, which ranks and honours were recognized and reorganized in 1886.

Considering that in 1890 and 1918 in just consideration the salaries of President and Judges of the Supreme Court of Justice were raised but who still maintained the ancient contribution for the officials of the Supreme Court of Justice, and in whose favor there is the same reason for betterment,

and once this hindrance is removed, the quality existing in the profession of law with judges and officials of the Public Ministry will regain the confidence of the parties and the impartiality of magistrates.

Considering that the salaries of the employees of the offices of the Supreme Court of Administration are not in harmony with those of the other officials in identical category as those of other Ministries, and particularly those of the Ministry of the Interior, of which this office is part.

Considering that with the exception of the provisions made by the litigants, giving room to abuses, and augmenting greatly the work of the Court;

(Signed by) W. Stanley Hollis, Consul General.
" Alvaro Augusto Nunes Ribeiro.

Considering that the perquisities in the other Courts have been raised maintaining in the Supreme Court of Administration the same budget of the 23rd of February of 1888:

Considering that the increase of expenses is a just reason for improvement of the salaries of the officials, secretary general and employees of the offices of the Supreme Court of Administration and compensated in great part by the order created, and which shall be taken care of by the State;

And because of this, it is decreed, by the Government of the Republic of Portugal, with full power of law;

Article 1. It is ordered, that the annual salaries of the President and effective officials of the Supreme Court of Administration shall be placed on equal footing with the Presidents and Judges of the Supreme Court of Justice, retaining these first magistrates with the rights and favor of the last.

only insertion—It is also prohibited for all employees of the Public Ministries together with those of the Supreme Administration Court to practice their profession of law.

Art. 2. The positions of officials extraordinary of the Supreme Court of Administration are voided.

Art. 3. On the absence for a longer period than thirty days of any of the effective officials the Government can name substitutes, being proposed by the Court by triplicate list, and composed of persons who satisfy the requirements of article 3, of the decree of July 28th, 1888.

only insertion—The substitute shall receive the corresponding salary.

Art. 4. The salary of the Secretary General, first and second clerks, amanuensis, messengers and servants of the Supreme Court of Administration are prohibited to advocate or solicit Court proceedings affecting this same Court.

Art. 5. Decree No. 4:143, of April 23rd, 1918, is not to be applied to the Supreme Court of Administration, but full force and respect must be given to the general dispositions to the decree of February 23rd, 1888, in those parts which are not altered by the present decree.

Art. 6. It shall be raised to double the amounts required in article 1 of the general dispositions in the mentioned decree, of February 23rd, 1888, and the approved budget in this same decree will stand as fixed emoluments, in Nos. 1, 2, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 25, and augmenting by 50 per cent those of Nos. 3. 4, 6, 7, 10, 11, 19, 20, 26, 27, 28, 29, and in 25 per cent those in Nos. 5, 8, 9.

Art. 7. The necessary credit to pay the above commission as disposed in this decree shall be opened with the Ministry of Finances, in favor of the Ministry of the Interior.

Art. 8. Agreed to revoke all former legislation to the contrary.

It is resolved, therefore, that the authorities must comply and put into execution the present decree as law, to obey to have this obeyed and protected as completely and fully as it is here contained.

The President of the Cabinet, Minister of the Interior and Ministers of all other Departments, make this public. Government House of the Republic, May 9th, 1919, JOAO DU CANTO E CASTRO SILVA ANTUNES—Domingos Leite Pereia—Antonio Joaquim Granjo—Amilcar da

Silva Curto—Antonio Maria Baptista—Vitor Jose de Deus de Macedo Pinto—Xavier da Silva Junior —Julio de Pattrocinio Martins—Jodo Lopes Soares —Leonardo Jose Coimbra—Jorge de Vasconcelos Nunes—Luis Brito Guimardes.

MINISTRY OF JUSTICE AND WORSHIP

OFFICES OF THE DIRECTORSHIP OF JUSTICE AND WORSHIP

Decree No. 5:554

Owing to the many causes which have aggravated the economic conditions of existence in Portugal, the meaning of the word "poverty" employed in the fiscal laws in the civil proceedings have been modified:

In the name of the Nation, the Government of the Republic of Portugal, in a promulgation, to serve as law, it is decreed as follows:

Art. 1. All accounting pertaining to orphans of the amount not exceeding 120$ are exempt from stamps and fees due in poverty documents.

Art. 2. All accountings for more than 120$ and up to 500$ of emoluments and fees shall be paid as half of the proportions fixed by the laws in force.

Art. 3. The emoluments designated by No. 32 of Article 17 of the budget of emoluments and

judicial fees, approved by law on the 13th of May, 1896, shall be raised to double their amount when the claim is of a superior value to 10,000$ and those of No. 20 in the same article 17 shall be regulated by value of the claims and by terms in No.2 and 3 of the same budget.

Art. 4. The law articles for emoluments designated in No. 4 of article 18 of the budget when these debts are of a superior value to 500$ they shall be modified in the following manner.

Presidentship of Family Council, nomination of referees, auctions, sortition, conferences of heirs and creditors, and conferences of heirs, over claims of accounts, per day if the value of the debts are:

More than	500$ up to	$70
More than	1,500$ up to	1$00
More than	3,000$ up to	1$40
More than	6,000$ up to	2$00
More than	10,000$ up to	2$50
More than	15,000$ up to	3$50
More than	30,000$ up to	5$00
More than	45,000$ up to	7$50

More than 60,000$ up to 100,000$ the emoluments increase from the antecedent 7$50 to a cent for each 20$ exceeding this sum.

More than 100,000$ and up to 200,000$ the preceeding emoluments will be increased by two thirds of this same emolument.

In family councils in which an accounting is made by guardians, curators, administrators or any other act of administration of persons or minors, absentees or incompetents, and if the sums to which the accounting refer and the portions secured legally for each should be more than 120$ these will be regulated by the values fixed in article 2 of this No. 4.

When a second sortition has to be made the value be regulated by the portion into which it is subdivided.

When auctions are ordered in default of payment, whatever may be the value of the debt, should it be of a value more than 120$ the emoluments shall be of 1$40.

In the family councils, especially demanded by the creditors to prove their accounts the regulated value for these emoluments cannot be less than $70.

(Signed by) W. Stanley Hollis, Consul General.
" Alvaro Augusto Nunes Ribeiro.

Art. 5. It is also substituted in Number 8 of Article 18 of the same budget the following:

To determine the distribution being the value of the debt:

For more than	500$	up to	1,500$	...1$20
For more than	1,500$	up to	2,000$	...1$80
For more than	3,000$	up to	6,000$	...3$00
For more than	6,000$	up to	10,000$	...6$00
For more than	10,000$	up to	15,000$	..12$00
For more than	15,000$	up to	30,000$	..18$00
For more than	30,000$	up to	45,000$	..24$00
For more than	45,000$	up to	60,000$	..30$00

When more than 60,000$ and up to 100,000$ the preceeding emoluments shall increase from 30$ and from $01 up to 15$ when not exceeding that value.

When more than 100,000$ the preceding emoluments shall increase two-thirds more than this emolument.

From 200,000$ and beyond, nothing more.

When by virtue of a relief or a new judgment has reduced this distribution and because of the new resolution, or when the interested parties do not leave any legatees or creditors, the appropriation in the decree shall be raised to a third more of the regulated emolument according to the amount of the inventory.

When an additional distribution must be conducted, the emolument in proportion to their importance shall be raised and divided according to the terms of the present article.

For the expedition of a conference of heirs over the claims of accounts and for decision of claims presented, $60.

Art. 6. The emoluments mentioned in Nos. 10 and 14, and included in the same Article 18 of the budget, shall be raised to double the amount.

Art. 7. In all orphans proceedings which exceed the value of 2,000$ and up to 5,000$ each citation will carry the lawful registration fees of the notarial offices of edicts of $30; if of a superior value than 5,000$ and up to 20,000$, $40; of superior value than 20,000$ and up to 60,000$, $60; and if of a superior value than 60,000$ according to the fees that are assigned in the civil part of the budget.

Art. 8. For the same kind of processes and in the form indicated before, each summons will carry the lawful notarial fees respectively of $20, $30, $40, according to the fees assigned in the civil part of the budget.

Art. 9. The fees shall be raised to double the amount as assigned in Nos. 19 and 25 of Article 41 of the budget, when the case is of superior value than 10,000$.

Art. 10. The fees shall be raised respectively to 1$20, $50, $40, as assigned in Nos. 7 and 11 of Article 43 of the budget and double those of Nos. 8, 9 and 10, of the same article.

Art. 11. The fees designated in No. 1 of Article 53 of the budget shall be altered in the following manner:

For each citation of creditors or legatees:

In civil or commercial processes, $80. In processes for orphans the same fees which are due in these acts as lawful registration.

For each summons for creditors or legatees, officials of family councils, testimonies, experts and appraisers:

In civil or commercial processes, in cases up to the value of 2,000$, $35.

If the value of these are superior, or in criminal processes, $50.

In orphan's processes:—For a value superior to 2,000$ and up to 5,000$, $20.

Of a value superior to 5,000$ and up to 20,00$, $25.

Of a value superior to 20,000$ and up to 60,000$, $30.

Of a value superior to 60,000$, $40.

Art. 12. In all processes of a superior value to 100,000$ the accountants fees shall be raised to double the amount.

Art. 13. In the terms of this decree, only in the order of orphan's distributions or cases of poverty and debts and which are comprised in the first two orders of Article 170 in the Code of Civil Processes have been altered.

Art. 14. With this and Article 74 of the budget will prevail to determine the value of the cases or to record the accounting of inheritances, presented at the department of finances for settlement of the lawful registration fees.

Art. 15. The processes to which Article 23 refers to in the decree of the 29th of May, 1907, the fees and contributions sholl be for their full amount.

Art. 16. This is to be applied to the Notarial offices of the Commercial Courts of the district of Lisbon and provided in #only insertion# of Article 2 of the decrees of the 26th of May, 1911, and so well provided for in Article 10 of the decree No. 3:978, on the 25th of May, 1918, in the part applicable to this.

Art. 17. The subjects referred to in Article 23 of decree No. 3:968, of May 2nd, 1918, shall be raised respectively to 10$ and 3$, these increases being considered as State income, and which shall be paid by stamps.

Art. 18. In the processes in which there has been an accuser, the stamps and costs shall be according to terms in Articles 48 and 50 of the budget, if the process has been filed for a longer period than three months.

Art. 19. In the criminal process referred to in Article 241 of the latest Judiciary Reforms there will be no charges for either Lisbon or Porto, but in case of a judgment, to the penalty imposed shall be added always, as indemnity to the State, a fine fixed by the judge 1$ and 20$.

Art. 20. In criminal processes which take place in Lisbon or Porto there shall be no charges for seal, but, in case of a judgment, to the penalties imposed shall always be added as indemnity to the

State, a fine and justice tax which the judge shall affix, and which will have the following limits:

For police corrections from 10$ to 30$; in correctional processes, 20$ to 50$; in complaint cases from 60$ to 100$.

#only insertion# In case of incidents the prosecutor must pay the sum of 6$, which shall be given entrance in the Public Treasury.

Art. 21. When a defendant has been absolved the plaintiffs shall pay the fine of indemnity or justice tax referred to in the preceding article.

insert 1. If there should be an appeal the fees as disposed in the judicial budget only shall be collected.

insert 2. If there should be no appeal, the fine shall be collected in the offices of the accountant and the clerks of the processes shall return the respective execution within five days after the transition of the judgment of the case.

insert 3. After citing the defendant for payment and at the end of the 10 days lapse, always that this should have been done, and which must be complied with as set forth in #3 of Article 122 of the Penal Code.

Art. 22. In the deprecation of criminal processes, if there is no accuser, at the conclusion of the deprecating case an accounting shall be made of the costs of the judgment.

Art. 23. Bailers and bondsmen in criminal proceedings are only responsible for the fines and justice tax referred to in the preceding articles.

Art. 24. In the proceedings that have a bailer or bondsman the execution shall be entered in the Court of Transgressions, according to the laws in force, pointing out the respective

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(Signed by) W. Stanley Hollis, Consul General.
" Alvaro Augusto Nunes Ribeiro.

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certificates with the name of the accused or of his bailer or bondsman, and their place of residence.

Art. 25. All fees which are actually received by the clerks of the proceedings of criminal investigation and transgressions, criminal wards, and those entrusted with criminal registration and officers of criminal proceedings and transgressions, shall be for the State.

Art. 26. Besides the actual salaries, there shall be the following:

Clerks of criminal investigation cases, criminal wards, criminal trials and transgressions, and clerk in charge of the criminal register of Lisbon and Porto, 2508.

Assistant clerks of the criminal wards, trials of investigation and transgressions and

assistants to the clerk in charge of the criminal register of Lisbon and Porto, 150$.

Officers of proceedings in investigation trials, criminal wards, criminal trials and trials of transgressions, 150$.

Art. 27. The tax shall be increased on stamped paper that is stamped or printed, in judicial proceedings, to $05 tax stamp which shall be placed on every page and cancelled in the manner of the regulations in force.

Art. 28. The percentage in favor of the State which is set forth in article 5, and in its # only insert of decree No. 4:566, of the 9th of July, 1918 shall be increased in the Department of Lisbon to 50 per cent, for the Department of Porto a 25 per cent, and for all other departments a 12 per cent.

Art. 29. The Government is authorized to rearrange the budget of emoluments and judicial salaries.

Art. 30. Agreed to revoke all laws to the contrary.

It is resolved therefore, that the authorities must comply and put into execution the present decree as law, to obey, to have this obeyed and protected as completely and fully as it is here contained.

The Ministers of all the different divisions they have so agreed and to have this published. Government House of the Republic, May 10th, 1919. JOAO DU CANTO E CASTRO SILVA ANTUNES—Domingos Leite Pereira—Antonio

Joaquim Granjo—Amilcar da Silva Ramada Curto —Antonio Maria Baptista—Vitor Jose de Deus de Macedo Pinto—Xavier da Silva Junior—Julio de Patrocinio Martins—Jodo Lopes Soares—Leonardo Jose Coimbra—Jorge de Vasconcelos Nunes—Luis de Brito Guimardes.

DECREE NO. 5:555

Having in consideration that it is to the general interest to better and improve the administration of justice, simplifying and specializing its functions:

Having in consideration that for this improvement it is convenient thereupon to relieve the congestion of service in charge of the Public Ministry in the Commercial Courts of Lisbon, owing to the progressive growing of cases in which these magistrates have to intervene, either as principals or assistants, and the difficulties of these: and

Having in consideration that some of the restrictions imposed on them by legislation now in force are not justifiable nor the duties of certain acts which they have been entrusted with:

In the name of the Nation, the Government of the Republic of Portugal it is decreed and promulgated, to be a valid law, the following:

Art. 1. The services shall be discontinued in the offices of the 1st. District of the Commercial

Court of Lisbon of the clerk of the register of this county.

Art. 2. To the actual secretary of the 1st. District is exclusively assigned
the functions of clerk of the commercial register of the county of Lisbon, who will continue to exercise these duties as assigned by the laws now in force, but under this designation.

only insert—All other attributions in charge of this magistrate which are discontinued in this present decree shall be fixed and assigned as belonging to the secretary that shall be appointed for this office, and which is completely provided for by attributions and duties to the secretary of the 2nd District of the same Court.

Art. 3. The guardian of the commercial register of the county of Lisbon will continue to receive the stipend which actually belongs to him as also those fees which by the laws in force belong to him for the duties of commercial registration without laws without loss to the Public Treasury of the portion which belongs to it.

only insert—All other emoluments shall be charged as well as the respective duties for the secretary of this office.

Art. 4. The position of secretary of the 1st. District of the Commercial Court of Lisbon shall only be occupied by an individual with a law career, and of recognized competency.

Art. 5. The expenses of installations, personnel, stationery or any other necessities belonging to the office of the commercial register of the county of Lisbon shall be exclusively in the charge and responsibility of the respective clerk.

Art. 6. From the office of the 2nd. District of the Commercial Court of Lisbon shall be discontinued the duties of archivist in both departments of the same Court.

Art. 7. The files of the Commercial Court of Lisbon are suppressed, and must be incorporated in the files of proceedings or parts which form it.

Art. 8. To the secretaries of the commercial courts of Lisbon and Porto shall be given as emoluments the fees, dues and charges for proceedings and also when they have intervened as principals, seconds, assistants, or in their duties of office, and fiscal duties, when accounting for the Public Treasury, and for any other acts which they may perform, intervene or promote, they shall receive the fees as assigned by the laws in force.

Art. 9. The secretaries of the commercial courts of the counties of Lisbon and Porto cannot advocate the cases in which they have in any way intervened as secretaries, even when they have to perform the duties of mere fiscals.

Art. 10. To the secretaries of the commercial courts belong exclusively the registration fees of either of the respective judgments for the expedition of certain duties or decrees.

Art. 11. Agreed to revoke all former legislation to the contrary.

It is resolved, therefore, that all authorities must comply and put into execution the present decree and enforce it as law, to obey and to have this obeyed and protected as completely and fully as it is here contained.

The Ministers of the different Departments have so agreed and make this public. Government House of the Republic, 10th of May, 1919.

JOAO DU CANTO E CASTRO SILVA ANTUNES—Domingos Leite Pereira—Antonio Joaquim Granjo—Amilcar da Silva Ramada Curto —Antonio Maria Baptista—Vitor Jose Deus de Macedo Pinto—Xavier de Silva Junior—Julio de Patrocinio Martins—Jodo Lopez Soares—Leonardo Jose Coimbra—Jorge de Vasconcelo Nunes—Luis de Brito Guimardes.

MINISTRY OF THE NAVY

Department of the Cabinet

Decree No. 5:556

Considering the duties which must be performed by the auxiliary officers of a squadron during manoeu—

(Signed by) W. Stanley Hollis, Consul General.
" Alvaro Augusto Nunes Ribeiro.

vres these shall be superior in number to the officers who form this squadron; and

Having in consideration the enormous disproportion which exists between those in the same squadron and the petty officers appointed for the purpose:

In the name of the Nation, the Government of the Republic of Portugal a decree is promulgated, with full power of law, the following:

Art. 1 The squadron of auxiliary officers for manoeuvres are augmented with ten marine-guards.

Art. 2 This decree is to be enforced immediately, and all legislation to the contrary is to be revoked.

It is resolved, therefore, that all authorities must comply and put into execution the present decree and enforce it as law, to obey and to have this obeyed and protected as completely and fully as it is here contained.

The President of the Cabinet, Minister of the Interior and Ministers of all other departments make this public. Government House of the Republic, May 10th, 1919.

JOAO DU CANTO E CASTRO SILVA ANTUNES—Domingos Leite Pereira—Antonio Joaquim Granjo—Amilcar da Silva Ramada Curto—Antonio Maria Baptista—Vitor Jose de Deus de

Macedo Pinto—Xavier da Silva Junior—Julio de Patrocinio Martins—Jodo Lopes Soares—Leonardo Jose Coimbra—Jorge de Vasconcelos Nunes—Luis de Brito Guimardes.

MINISTRY OF THE COLONIES,

General Department of Civil Administration,

1st. Division.

1st. Section.

Decree No. 5:557.

The attribution to the Colonial Council having been greatly amplified, in virtue of the provisions made in the laws which provided for the centralization of the financial adminstration of the colonies in the decree for reorganization of the respective Ministry:

And for this reason it is necessary to endow this same Council with an exclusive secretarial office, equipped in a convenient manner to expedite the different cases that must circulate through it;

In the name of the Nation, the Government of the Republic of Portugal a decree is promulgated, with full power of law, the following:

Article No. 1. The Ministry of the Colonies together with the Colonial Council shall operate an exclusive secretarial office, called offices of the

Colonial Council, entrusted with the duties of registration, preparation and dispatch of all documents, proceedings, consultation of services authorized by this same Council, and appointing immediately for it the necessary employees.

Art. 2. The list of the personnel for this office shall comprise a chief, with the category of first officer of the general department of the Ministry of the Colonies, a second assistant officer, and a third officer, both belonging to the general department of the Ministry of the Colonies, an accountant, who shall form part of the department of the Treasury of the Ministry of the Colonies, with a second officer, a stenographer, two typists, and two substitutes.

#insert 1. The list for the personnel of the Ministry of the Colonies, fixed by the decree of May 8th, 1918, shall be altered to harmonize with the arrangements in this article.

#insert 2. In case of necessity and recognized by the Colonial Council, the dispositions in article 55 and No. 60 of the decree of the 8th of May, 1918, which reorganized the Ministry of the Colonies, shall be applied to the secretarial office of the same Council.

Art. 3. The position of chief of the secretarial office shall be filled by a first or second officer of the general department of the Ministry of the Colonies, and in the position of accountant shall be placed an officer of the Treasury of the department of the Ministry of the Colonies or anyone

who possesses the ability and competency to perform the above duties, and taken from the colonial departments.

only insert. For the nomination for second and third officer of the general department of the Colonial Ministry, what is disposed for in the #only insert of article 57 of the decree of May 8th, 1918, shall be had in mind, should there be any additional employees.

Art. 4. The chief of the secretarial office of the Ministry of Colonies, being temporarily hindered from assisting at the sessions of this same Council, and in his duties as employee of the office, shall be temporarily substituted by the next officer of the department of the Colonial Ministry rendering services at the same office.

Art. 5. The mentioned personnel in article 2, and in conformity to their category indicated in this article, shall be given the salaries designated in Budget A of the decree of May 8th, 1918, and in article 1 of the law of June 30th, 1912 the chief of the secretarial office shall receive a monthly reward of 20$, and the second officer of the Treasury, accountant, the monthly reward of 15$.

Art. 6. The Colonial Council shall put in operation in the shortest possible time the plan for the governing relative to the dispositions ordered concerning their secretarial office.

Art. 7. To be able to meet in the actual saving year the expenses following this law, the Govern

ment shall open the special credit made necessary by the annulment of the allotment in the budget.

Art. 8. Agreed to revoke all former legislation to the contrary.

It is resolved, therefore, that all authorities must comply and put into execution the present decree and enforce it as law, to obey and to have this obeyed and protected as completely and fully as it is here contained.

The President of the Cabinet, Minister of the Interior and Ministers of all other departments make this public. Government House of the Republic, May 10th, 1919.

JOAO DU CANTO E CASTRO SILVA ANTUNES—Domingos Leite Pereira—Antonio Joaquim Granjo—Amilcar da Silva Ramada Curto—Antonio Maria Baptista—Vitor Jose de Deus de Macedo Pinto—Xavier da Silva Juinor—Julio de Patrocinio Martins— Jodo Lopes Soares—Leonardo Jose Coimbra—Jorge de Vasconcelos Nunes—Luis de Brito Guimardes.

MINISTRY OF PUBLIC INSTRUCTION.

General Office.

Decree No. 5:358.

Being of absolute necessity the construction of a proper edifice for the Superior School of Pharmacy;

And considering that the Superior School of Pharmacy is operating under inadequate conditions, being over-crowded and distant from the Medical University;

And considering that it is very urgent to supply this superior school with a definite building, with modern and adequate pedagogic conditions applied under the present manner of instruction, and impossible to be exercised in an establishment having the need for more laboratories than those which it actually possesses; and

Considering that in article 1 of chapter 111 "of expenses" of the law of June 19th, 1902, which created the school of pharmacy, and which orders the application of a stamp on all pharmaceutic specialities creating in this manner an income

(Signed by) W. Stanley Hollis, Counsel General.
" Alvaro Augusto Nunes Ribeiro.

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which cares for the expenses and the maintenance of the schools in reference.

Considering that the classes in pharmacy, are of great benefit, and met by the respective tax that produces an important income, it is not just that the Superior School of Pharmacy should not have proper and deserving edifices;

And considering that the schools of Coimbra and Porto already are provided with new and appropriate as well as modern edifices and which the Superior School of Pharmacy of this capital does not possess;

The Government of the Republic of Portugal, with the proposal of the Minister of Public Instruction, decrees in a promulgation, with the full power of the law the following:

Art. 1. The Government is authorized to contract a loan with the "Caixa Geral de Depositos" the sum of 500,000$ to acquire land and to construct an edifice for the Superior School of Pharmacy of Lisbon and to obtain school equipment and furniture, with an interest not to exceed 5 per cent., and redeemable in sixty years.

§ only insert. To meet the interests and amortization of the above loan, the corresponding clause shall be entered in the budget of expenses for the current fiscal year in the above contracting terms.

Art. 2. Agreed to revoke all former legislation to the contrary.

It is resolved, therefore, that all authorities must comply and put into execution the present decree and enforce it as law, to obey and to have this obeyed and protected as completely and fully as it is here contained.

The President of the Cabinet, Minister of the Interior and Ministers of all other departments

make this public. Government House of the Republic, May 10th, 1919.

JOAO DU CANTO E CASTRO SILVA ANTUNES—Domingos Leite Pereira—Antonio Joaquim Granjo—Amilcar da Silva Ramada Curto—Antonio Maria Baptista—Vitor Jose de Deus de Macedo Pinto—Xavier da Silva Juinor—Julio de Patrocinio Martins—Jodo Lopes Soares—Leonardo Jose Coimbra—Jorge de Vasconcelos Nunes—Luis de Brito Guimardes.

GENERAL DEPARTMENT FOR PRIMARY AND NORMAL INSTRUCTION.

DECREE No. 5:559.

Recognizing the absolute necessity of furthering the immediate completion of the edifice for the installation of the Primary Normal School of Lisbon;

And considering that the delay in the construction work, is due to the exhaustion of the amount authorized in the corresponding law, and that this would cause a deterioration of the incomplete constructions, and also contributing at the same time to aggravate the labor crisis which is actually felt by the laboring classes;

And considering the serious damage which the delay in the construction of the edifices is causing by delaying the regular scholastic sessions of the Normal Schools;

In the name of the Nation, the Government of the Republic of Portugal, decrees in a promulgation, with the full power of law the following;

Article 1. The Government is authorized to contract with the "Caixa Geral de Depositos" a loan for the amount of 250,000$ with interest not to exceed 5 per cent., redeemable in sixty years, and to be applied for the completion of the edifice for the Primary Normal School of Lisbon.

Art. 2. To be able to meet the interest and amortization of this loan, the necessary clause must be inserted in the Budget of General Expenses of the State, in the above contracting terms.

It is resolved, therefore, that the authorities must comply and put into execution the present decree as law, to obey, to have this obeyed and protected as completely and fully as it is here contained.

The Ministers of the different departments have this printed, published and circulated. Government House of the Republic, May 10th, 1919. JOAO DU CANTO E CASTRO SILVA

ANTUNES—Domingos Leite Pereira—Antonio Joaquim Granjo—Amilcar da Silva Ramada Curto—Antonio Maria Baptista—Vitor Jose de Deus de Macedo Pinto—Xavier de Silva Juinor—Julio de Patrocinio Martins—Jodo Lopes Soares—Leonardo Jose Coimbra—Jorge de Vasconcelos Nunes—Luis de Brito Guimardes.

GENERAL DIRECTION FOR HIGHER INSTRUCTION.

DECREE No. 5:560.

Fixing article 33 of decree No. 4:652 of July 12th, 1918, with the full powers of law, and establishing a reward and remuneration for the professorship of the Clinics of the Medical Universities, whose services have not been awarded;

And as the remunerations of the directing professors of the scholastic clinics or those under hospital services considered as salaries, prevent these professors from receiving their right dues as professors owing to the dispositions in article 63 of the decree No. 4:554 of July 6th, 1918, with full powers of law.

And realizing the necessity of avoiding any endangering of the services in the clinical and other hospitals, and that they may not suffer with inconveniences which may result from the above said reason;

And considering that the resolutions of article 63, restricts the privilege of selection of professors and assistants necessary for the success of instruction in the universities:

In the name of the Nation, the Government of the Republic of Portugal, decrees in a promulgation, with the full powers of law, the following:

Article 1. The compensations conferred on the professors of the Medical Faculties shall be con-

sidered as reward for the services rendered in the scholastic clinics, as well as the other specialties under their charges.

Art. 2. The professors and assistants who teach in universities and occupy other positions and receive the respective salaries or if these should be pay conferred by their military rank according to the law of March 13th, 1884, they shall have the right to select between these salaries and choose the one most suitable. In case of professors with military pay these shall be reduced to two-thirds of the respective pay.

Art. 3. Agreed to revoke all former legislation to the contrary.

It is resolved, therefore, that the authorities must comply and put into execution the present decree as law, to obey, to have this obeyed and protected as completely and fully as it is here contained.

The Ministers of the different departments have this printed, published and circulated. Government House of the Republic, May 10th, 1919. JOAO DU CANTO E CASTRO SILVA ANTUNES—Domingos Leite Pereira—Antonio Joaquim Granjo—Amilcar da Silva Ramada Curto—Antonio Maria Baptista—Vitor Jose de Deus de Macedo Pinto—Xavier da Silva Juinor—Julio de Patrocinio Martins—Jodo Lopes Soares—Leonardo Jose Coimbra—Jorge de Vasconselos Nunes—Luis de Brito Guimardes.

As some mistakes were made in the Government Daily Record No. 91, Series 1 of the 2nd of this month, article 2 of Decree No. 5:491 shall be republished.

Article 2. The list of professors of group 6 has been augmented by two regular professors and one assistant.

≠ only insert. The first definite filling of vacancies which occur in the list of professors shall be effected according to Article 55, in full force as law, No. 4:554, July 6th, 1918, or without restrictions by the Government, in which case the nomination will fall on persons of recognized scientific aptitude.

(Signed by) W. Stanley Hollis, Consul General.
" Alvaro Augusto Nunes Ribeiro.

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10. DEPARTMENT OF THE GENERAL DIRECTION OF PUBLIC ACCOUNTANCY

Decree No. 5:561

Originated in decree No. 5:259 of May 13th, 1919, and which transferred to the Ministry of Public Instructions the Institute of Colonial Missions which before this was a dependency of the Ministry of Colonies, according to decree No. 4:392, of June, 1918:

In the name of the Nation, the Government of the Republic of Portugal, decree and promulgate with the full force of law, the following:

Article 1. It is authorized to transfer to the Budget of the Ministry of Public Instruction the sum of 4,500$ corresponding to the 12th of April to June of 1919, and approved by the fiscal current year the allotment settled for the services of the Institute of Colonial Missions, entered in chapter 4, article 40, for the budget of ordinary expenses of the Ministry of the Colonies with respect to the present year administration of 1918-1919.

Art. 2. The amount referred to of 4,500$ shall be entered in the budget of ordinary expenses of the Ministry of Public Instruction, according to the following terms:

Chapter 4, article 23:

Subsidy to the Institute of Colonial Missions 4:500$

It is resolved, therefore, that the authorities must comply and put into execution the present decree as law, to obey, to have this obeyed and protected as completely and fully as it is here contained.

The Ministers of the different departments have this printed, published and circulated. Government House of the Republic, May 10th, 1919.

JOAO DU CANTO E CASTRO SILVA ANTUNES —Domingos Leite Pereira — Antonio Joaquim Granjo—Amilcar da Silva Ramada Curto—An-

tonio Maria Baptista—Vitor Jose de Deus de Macedo Pinto—Xavier da Silvo Juinor—Julio de Patrocinio Martins—Jodo Lopes Soares—Leonardo Jose Coimbra—Jorge de Vasconcelos Nunes—Luis de Brito Guimardes.

Decree No. 5:562

Having verified the evident insufficiency in distribution of the different subsidies in the budget for expenses for the Ministry of Public Instruction, in it authorized that during the fiscal year of 1918-1919:

And recognizing the immediate necessity of making payments for the expenses produced by the abnormal circumstances of the monarchical insurrection, as in the cases for services of examinations and prosecutions to which, according to decree with full law force No. 5:203, of May 5th, 1919, some action is urgently needed;

It is convenient also to provide, by amending the articles of the law which are insufficient to meet the expenses for extraordinary services, procure equipment, educational committees, representatives of Congrees and others, which are of imperative urgency.

In the name of the Nation, the Government of the Republic of Portugal, decree in a promulgation with full force of law, the following:

A credit is open with the Ministry of Finances in favor if the Ministry of Public Instruction for the

sum of 64,305$ and which shall be entered in the budget for this last Ministry referred to and distributed according to the chapters and articles hereinafter, in the quotations with their respective designations:

Chapter 2.—General Office of the General Management of the Ministry

Article 5.—Changeable allowances:

Disbursements for extraordinary work ..... 1.500$00

Article 6—Equipment and different expenses:
Procuring furniture ....16,000$00

17.000$00

Chapter 3.—Primary Instruction and Normal
Fiscal duties in Primary Education:

Article 11.—A Equipment and Different Expenses:

Installation expenses for the offices of School Registration Inspection 1.200$00
Primary Instruction

Article 17.—Personnel in attendance:
Salaries..... 1.500$00

2.700$00

Chapter 4.—Higher Instruction:

Article 30. — Construction and restorations of the edifices for Colleges .... 1.500$00

Chapter 5.—University Instruction

University of Lisbon
Faculty of Science

Article 37. — Equipment and General Expenses: Salaried personnel of the Botannical Garden .. 2.100$00

Chapter 8. — Eventual expenses for services of instruction

Article 67. — General disbursements:

Assistance in the costs and expenses of transportation for the examination and inspection of instruction establishments ..... 10.000$00

Aid in the costs and expenses of transportation for the delegation on special studies and for representation in foreign conventions.. 33.000$00

Awards, and aid in the repayment of expenses to the Officers of Special Educational Committees ..... 3.500$00

16.500$00

Article 68.—General Expenses:		
Eventual and unlooked-for expenses, including the automobile service for the Minister.....	19,000$00	
Publication authorized by the Minister of Public Instruction	1.000$00	
Subsidies to assist in the expenses in the exchange with foreign countries of scientific and artistic investigations	4.000$00	24.000$00
Total		64.300$00

It is resolved, therefore, that the authorities must comply and put into execution the present decree as law, to obey, to have this obeyed and protected as completely and fully as it is here contained.

The Ministers of the different departments have this printed, published and circulated. Government House of the Republic, May 10th, 1919.

JOAO DU CANTO E CASTRO SILVA ANTUNES — Domingos Leite Pereira — Antonio Joaquim Granjo—Amilcar da Silva Ramada Curto—Antonio Maria Baptista—Vitor Jose de Deus de Macedo Pinto—Xavier da Silva Junior—Julio de Patrocinio Martins—Joro Lopes Soares—Leonardo Jose Coimbra—Jorge de Vasconcelos Nunes—Luis de Brito Guimardes.

Decree No. 5:563

Using the faculties authorized to the Government according to article 45 of the decree with the full power of law No. 5:336, of May 24th, 1919, and organizing the services of the Portable Schools:

(Signed by) W. Stanley Hollis, Consul General.
" Alvaro Augusto Nunes Ribeiro.

May 10, 1919 811

By proposal of the Ministry of Public Instruction complied with in the dispositions of #insert 3 of Art. 34 of the law of the 9th of September, 1908, and approved by the Ministerial Council:

It has been decreed that a special credit shall be opened with the Ministry of Finances in favor of the Ministry of Public Instruction for the sum of 15.100$, with the object of paying the disbursements for personnel under the list of Portable Schools and to help pay the costs and expenses for the transportation of inspectors of these same schools during the fiscal year of 1918-1919.

The referred amount shall be entered in Chapter 3 in the budget of general expenses of the Ministry of Public Instruction authorized accordingly by the decree in force No. 4:661 of July 11th 1918, in the article before mentioned and under the signatures also mentioned, adding to this said credit the sum of 13.400$ for disbursements in this same

budget and applied to the services of the Portable Schools, and passed by the constitutions in the budget appropriated for the payment of the charges resulting from the reorganization of these same schools, compiled in this manner and make an allotment for the new services to the amount of 28.500$ distributed as follows:

PORTABLE SCHOOLS.

(Decree in force No. 5336 of March 24th, 1919.)

Article 16.—Personnel: Disbursements for the personnel in the lists	24.400$00
Article 16A—General disbursements: for the costs and expenses of transportation of inspectors of these same schools	500$00
Article 18.—Equipment and general expenses	3.600$00

The disbursements first inscribed in the budget for the current fiscal year as applied to the services of the Portable Schools shall be transferred according to the disbursements of the new services in the following sums:

From Article 16—Salaries	9.500$00
From Article 17—	300$00
From Article 18—Expenses of office, etc.	3.600$00

The Superior Council of the Financial Administration of the State have acceded to this credit according to the legal terms decreed.

The President of the Ministry and the Ministers of all the other Departments have thus agreed to have this executed. Government House of the Republic, May 10th, 1919. JOAO DU CANTO E CASTRO SILVA ANTUNES—Domingos Leite Pereira—Antonio Joaquim Granjo—Amilcar da Silva Ramada Curto—Antonio Maria Baptista—Vitor Jose de Deus de Macedo Pinto—Xavier da Silva Juinor—Julio de Patrocinio Martins—Jodo Lopes Soares—Leonardo Jase Coimbra—Jorge de Vasconcelos Nunes—Luis de Brito Guimardes.

MINISTRY OF PUBLIC WORKS.

Direction General of Mines and Geological Services Mining Department.

Ministerial Decree No. 1:772.

Considering that the Company of Mineral Waters of Melgaco, Limited, have proceeded to appropriate the medicinal mineral waters denominated Fonte de Peso, situated in the parish of Paderno, Municipality of Melgaco, district of Viana do Castelo, without Government's authorization and which is absolutely against the dispositions of article 2 in the decree of September 30th, 1892 and article 2, of article 1 of the ordinances of July 5th, 1894:

And considering that all mineral waters are State properties, and the fundamental principal of this law:

And considering that it is well to carry out an act of social benefit by furnishing the classes not so well provided for with those mineral waters which the State owns:

It is ordered by the Government of the Republic of Portugal and created by decrees No. 5:443 and 5:841 to refuse the petition the concession asked for mineral waters by the Company of Mineral Waters of Melgaco, Limited, and it is resolved that the new spring called Fonte de Paso, as Government property shall be employed usefully by the Administration Council of the Laborers District.

Government House of the Republic, May 2nd, 1919. The Minister of Labor—AUGUSTO DIAS da SILVA.

MINISTRY OF SUPPLIES.

General Office.

Decree No. 5:564.

The war created the necessity of maintaining a Direction General of Maritime Transportation of the State, concentrating in this authority all the powers in relation to mercantile navigation, the first principal of which was of supplying the country.

The object of that organization was to provide supplies, thus obtaining a relative well-being for

the country, and if it was no better, good reasons existed, foreign to its organization, the motives of which have been summarily indicated.

At the moment, however, when the armistice period has ended and the free countries entered in their reconstruction and development period, it is necessary that the national navigation should answer as completely as possible the ends for which it was established, and that it should prove a strong element toward national wealth.

But the voyages made today cannot obey exclusively the spirit of providing the country with first necessities, but must be looked upon with a broader view and with necessary co-ordination to contribute to the national protection.

Because of this, it is absolutely necessary to have a more complete organization by creating an Administrative Council of the Merchant Marine, assisted by a Consulting Committee, which shall make individual studies to gain intelligence and technical knowledge of commercial and colonial matters by constituting a centralization of all great questions of maritime commerce, conditions, voyages and freights.

With the elements which the Administrative Council of Mercantile Marine is provided with, it can grasp the complex problem of the selecting of voyages, resolving as logically as possible, the amount and quality of the cargoes, arranging the general service of all national merchant ships, that these shall work in an homogineal and practical manner, obtaining a regular provisioning of all

the commodities necessary to commerce and the reduction of freights.

The Governent foresees the possibility in the interests of the State, that the Government ships be exploited by private interests, but even in such case the Council as established constitutes an organization which is absolutely indispensible for the State to continue with, and which must continue to superintend the operation of all the national merchant ships regulating and co-ordinating all efforts, fiscalizing these for the general interest, and to be determined by the studied opinion of the delegates and members of the Consulting Committee.

The ships belonging to the Government, grouped administratively under the "Direction of the TRANSPORTES MARTIMOS", constitutes in this way one of the component parts of the

(Signed by) W. Stanley Hollis, Consul General.
" Alvaro Augusto Nunes Ribeiro.

national merchant fleet, and its administration, from a business point of view is subordinated to general economical plans, discussed and executed by the Administrative Council and agreed to by the Consulting Committee.

In this manner, the Direction of the "TRANSPORTES MARITIMOS", will be able to attend

more easily to the technical administration of the fleet of Government ships, the plans of which are in charge of the Council, whose technical administration shall be centralized in a way to work harmoniously and with method, complying in this manner with the object it was established for as a technical department for the benefit of the State.

The Government of the Portuguese Republic, decrees and promulgates, to be valid as law the following:

Article 1. An Administrative Council for the National Merchant Marine is created, as an autonomous department, technical and administrative, with powers to:

1 Regulate and study the voyages and freights of the National Merchant ships classifying these in a manner that their services shall be in harmony with the general interests of the State, applying to the merchant marine all the laws in force;

2 Organizing all the statistical service regarding voyages and freight, by quality and origin of the exports and imports;

3 Authorizing the voyages of the national ships for other purposes besides the supplying of commodities, when circumstances permit;

4 Organizing the service of ship-building, in a manner that would give an impulse to the development and rapidity of this construction.

5 Administering and directing the services of maritime transportation.

Art. 2. The Council of Administration for the Merchant Marine shall be composed of an active officer of the navy as president and four assistants named by the Government and the Ministry of Supplies, chosen from persons of unquestionable competency each one receiving the same monthly salary as the officials of the executive committee of the Administrative Council of State Railroads, as regulated in the organization and ordinances for State Railroads, and approved by decree No. 5:328 of the 25th of May, 1919.

only insert. The director of the maritime transportation may be present at the meetings of the Administrative Council of the Merchant Marine.

Art. 3. The Administrative Council of the Merchant Maritime will submit to a vote of the Consulting Committee the following subjects:

1 The qualities of the cargoes to be imported or exported, the percentage of freight to be charged on cargoes and advising the respective authorities.

2 The alteration of the laws regulating the different services of the merchant services of the merchant marine;

3 The necessary appointments of national ports that would render the largest revenue and be of the greatest help in the development of the country.

Art. 4. The Consulting Committee shall consist of;

1 A President, President of the Administrative Council of the Merchant Marine.

2 A Vice-president, the delegate of the Ministry of Supplies for the Administrative Council of the Merchant Marine;

3 A delegate from the Ministry of Commerce;

4 Two delegates of the Ministry of Supplies, one of them being a permanent Secretary of the Committee with a monthly stipend of 150$;

5 A representative of the Colonial commerce;

6 A representative of the Commercial Associations;

7 A representative of the Port Works of Lisbon;

8 A representative of the Industrial Associations;

9 A chief of the Department of General Navigation;

10. The Director of Maritime Transportation;

Art. 5. The Department of Navigation which at this date is under the Direction General of Maritime Transportation as well as the Statistical Section shall change and be under the Administrative Council of the Merchant Marine including all its personnel, who shall retain the same salaries received to date and guaranteed by the decree and laws in force.

Art. 6. The salary awarded the President of the Administrative Council of the Merchant Marine is the one established on this date to the extinct office of Director General of the "TRANSPORTES MARITIMOS DO ESTADO", fixed by the laws and decrees in force.

Art. 7. All legislation in reference to the National Merchant Marine shall continue to be enforced, and the fiscalization of its application and interpretation shall be executed by the Administrative Council of the Merchant Marine.

Art. 8. The Administrative Council of the Merchant Marine shall draw up the regulations for its operation, which must be submitted to the Consulting Committee in harmony with the dispositions of this law.

Art. 9. The Direction General of State Maritime Transportation is abolished and a "Direccao dos Transportes Maritimos" is created.

Art. 10. The Director of the Transportes Maritimos shall have the direction of the services of the merchant ships of the Government and maintain the same in the highest commercial efficiency.

Art. 11. The Director of the Maritime Transportation shall have under his charge the management of the following sections:

a) Services of transportation, freights, classification of rates, shippers and relation with the Administrative Council;

b) Accounting inspection;

c) Stevedores services, port equipment, loading and unloading;

d) Machine services, up-keep, conservation and personnel;

e) Workshop service, general repairs and personnel;

f) Services of the Lisbon Agency;

g) Commissariat Services;

h) Warehouse services;

i) Claim office;

j) Custom-House services;

l) Personnel services;

m) Services of ships chartered by the English Government;

n) Coal services;

o) Sanitation service;

p) Services of coal depot and watchmen;

only insert. The services as specified above in quotation a) comprises the colonial service and also foreign service.

Art. 12. The Director in charge of the Maritime Transportation must be a person of recognized competency for the purposes established, and his salary is the one established for the office of Director General of Maritime Transportation which has been discontinued.

Art. 13. All the personnel is proposed by the Administrative Council of the Merchant Marine and appointed by the Ministers, and the chief of the Transportation Agency must be an officer of the navy or merchant marine.

only insert. The balance of the necessary personnel for the different sections according to the above regulations, shall be engaged on contract and those who have held former positions in the "Direccao Geral dos Transportes Maritimos do Estado" are transferred to the "Direccao dos Transportes Maritimos" occupying the same positions and having the same salaries which are fixed by the decree in force on this date, once their appointments have been confirmed by the Director of Maritime Transportation.

Art. 14. The Director of Maritime Transportation shall keep the Superior Council of the Merchant Marine informed of the current commercial movements of its

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(Signed by) W. Stanley Hollis, Consul General.
" Alvaro Augusto Nunes Ribeiro.

ships and its financial situation by the means of semi-monthly statements, giving in details all the necessary information to estimate the manner in which this was accomplished.

≠ Only insert. Copies of these semi-monthly statements shall be sent to the Ministries of Finances and Supplies.

Art. 15. The "Direccao Dos Transportes Maritimos," transacts business directly with all the authorities.

Art. 16. The "Direccao Dos Transportes Maritimos," shall appoint their agents and its contracts shall be reported to the Administrative Council.

Art. 17. The "Direccao Dos Transportes Maritimos," shall retain guards for the duties of fiscalization and policing, whether on board the Government ships, when at anchorage or for ware-houses and deposits.

Art. 18. The Director of the "Transporte Maritimos" shall have an assistant of his selection as auxiliary, appointed by ministerial decree and with a salary decreed by the law in force for the actual assistant of the Director General of the Transporte Maritimos.

≠ Only insert. This assistant is the direct substitute of the Director.

Art. 19. The expenses resulting from the present decree shall be paid from the income derived of this exploitation.

Art. 5. This decree shall be enforced immediately and all other dispositions to the contrary shall be revoked.

It is resolved, therefore, that the authorities must comply and put into execution the present decree as law, to obey, to have this obeyed and protected as completely and fully as it is here contained.

The Ministers of the different Departments have ordered this published, Government House of the Republic, the 30th of April of 1919. JOAO DO CANTO E CASTRO SILVA ANTUNES—Domingo Leite Pereira—Antonio Joaquim Granjo—Amilcar de Silva Ramada Curto—Antonio Maria Baptista—Vitor Jose de Deus de Macedo Pinto—Xavier de Silva Junior—Julio do Patrocinio Martins—Joao Loes Soares—Leonardo Jose Coimbra—Jorge de Vanconcelos Nunes—Louis de Brito Guimardes.

Decree No. 5:565

Considering that the constant variations in prices of different merchandise causes the corresponding fluctuation in the prices of many of the primary necessities;

And considering that at times it is necessary to urgently take into consideration the circumstances

which do not combine with the tardy bureaucratic system;

And considering that it is necessary to provide the Government with sufficient means, in case of urgency, to alter the prices that owing to these circumstances do not possess the full commercial privileges:

In the name of the Nation, the Government of the Portuguese Republic decrees and promulgates to be valid as law the following:

Article 1. The prices of the different commodities for primary necessities shall be fixed according to a ministerial decree of the Ministry of Supplies.

Art. 2. It is agreed to revoke all legislation to the contrary.

It is resolved, therefore, that the authorities must comply and put into execution the present decree as law, to obey, to have this obeyed and protected as completely and fully as it is here contained.

The Ministers of the different Departments authorize the publication of this. Government House of the Republic, 10th of May, 1919.—JOAO DO CANTO E CASTRO SILVA ANTUNES—Domingos Leite Pereira—Antonio Joaquim Granjo—Amilcar da Silva Ramada Curto—Antonio Maria Baptista—Vitor Jose de Deus de Macedo Pinto—Xavier de Silva Junior—Julio do Patrocinio Martins—Jodo Lopes Soares—Leonardo Jose Coimbra—Augusto Dias da Silva—Jorge de Vasconcelos Nunes—Luis de Brito Guimardes.

Decree No. 5:566.

Having in view the petition which was sent to me by the Portuguese Industrial and Commercial Association, of Lisbon, with the object of having decree No. 3:878 revoked in the part ordered to be included in the budget A of decree No. 2:862 of November 30th, 1916, on paper with an overtax of $50 per kilogram;

And considering that the reason which caused the creation of the mentioned overtax no longer exists;

It is for this purpose and by proposal of the Minister of Supplies to decree the following:

Article 1. The export overtax of $50 per kilogram of paper and created by decree No. 3:878 of the 27th of February, 1918, and which was imposed on its exportation to foreign countries and depending on the authority of the General Department of Foreign Commerce for the Exterior, is hereby abolished.

Art. 2. The exports for the Portuguese Colonies do not need this superior authority.

Art. 3. It is agreed to revoke all legislation to the contrary.

The Ministers of Finance and Supplies have thus agreed to have this executed. Government House of the Republic, May 10, 1919.—JOAO DO CANTO E CASTRO SILVA ANTUNES—Amilcar da Silva Ramada Curto—Luis de Brito Guimardes.

Decree No. 5:567.

Considering that, to solve the problem for the supply of meat for the city of Lisbon, it is important to facilitate the economic acquisition of cattle and also to stipulate a reasonable and equitable price for the retail market;

And considering that the difficulties of supplies have been aggravated because of the price list established before this and which does not properly take into consideration the varying prices in the cattle market;

And considering that this fact has given rise to the very just claims of the proprietors of the slaughter-houses, as it is not legitimate to oblige them to sell meat at a lower price than cost.

In the name of the Nation, the Government of the Portuguese Republic decrees and promulgates to be valid as law the following:

Article 1. It is agreed to suspend and to leave without effect the dispositions of Article 3, and ⁂only insert of Article 11 of decree No. 4:950 of November 8, 1918, inasmuch as the new price-list of meat were not organized nor published by the Ministry of Supplies.

Art. 2. The price-list mentioned in the above article shall be arranged by a commission to correspond with the varying quotations of the prices for cattle, according to the various classes.

Art. 3. This decree enters into effect immediately and revokes all legislation to the contrary.

It is resolved, therefore, that the authorities must comply and put into execution the present decree as law, to obey, to have this obeyed and protected as completely and fully as it is here contained.

The Minister of Supplies has agreed to have this executed. Government House of the Republic, May 10, 1919.—JOAO DO CANTO E CASTRO SILVA ANTUNES—Domingos Leite Pereira—Antonio Joaquim Granjo—Amilcar da Silva Ramada Curto—Antonio Xavier da Silva Junior—Julio de Patrocinio Martins—Joao Lopes Soares—Leonardo Jose Coimbra—Jorge de Vasconcelos Nunes—Luis de Brito Guimardes.

Ministerial Decree No. 1:773.

As there is some doubt regarding the interpretation of Article 8 of decree No. 5:450 of the 15th of April last and in its only insert:

The Government of the Portuguese Republic, through the Minister

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(Signed by) W. Stanley Hollis, Consul General.
" Alvaro Augusto Nunes Ribeiro.

of Supplies, makes clear the faculties conferred on the Ministry when the previous importation license was conceded having had precisely in mind to regulate the conditions in which this importation could be made, otherwise this license would be unnecessary, and would not have been mentioned in article 8, in the same manner as it was not in article 7.

In this manner the Government, through its Ministry of Supplies, reserves the right to requisition, if convenient, a part of the quantity authorized for importation, according to the terms in article 8, and which shall be determined when the respective petitions are granted.

With regards to the #only insert, since in the respective article references are made to the importation of corn "with previous license" and in its paragraph it said "the accidental arrival to ports belonging to the Republic," it is evident that this means that which arrived into port by some unforeseen motive, without a previous license.

Government House of the Republic, May 10, 1919.—The Minister of Supplies, LUIS DE BRITO GUIMARDES.

Correction of Decree No. 5:513 and published in the "Government Newspaper" No. 94, of May 5th, 1919.

In the second line of article 8, which reads "of this origin," should read "from the origin of vegetable oil."

In the fifth line of #insert 2 of article 9, which reads "sending," should read "extending"; and in the eleventh line which reads "of cocoanut oil" should read "and cocoanut oil."

Ministry of Supplies, May 10, 1919. The Director General of Foods, ANTONIO FRANCISCO PEREIRA COELHO.

GENERAL DEPARTMENT OF FOREIGN COMMERCE.

Ministerial Decree No. 1:774

As it is convenient to simplify and facilitate commerce with the Portuguese Colonies, whenever the internal conditions permit, and recognizing that many products can be exported free:

The Government of the Portuguese Republic, through its Minister of Supplies, orders the following:

The following licenses for exportation and re-exportation for the Portuguese Colonies continue to be dependent on the Department General of Foreign Commerce until determined to the contrary:

Live animals;
Meats of all kind and prepared in any form;
Lard and bacon;
Cereals and flour;
Vegetables;

Sugar;
Potatoes;
Onions;
Eggs.

All other products can be exported and re-exported to the Portuguese Colonies without superior authority, whenever the internal economic conditions permit.

Government House of the Republic, May 10, 1919. The Minister of Supplies.—LUIS DE BRITO GUIMARDES.

(Signed by) W. Stanley Hollis, Consul General.
" Alvaro Augusto Nunes Ribeiro.

National Printery of Lisbon.

Fifth Edition, February 24th, 1916.
Series 1—Number 35.

GOVERNMENT OF DAILY RECORD.

All correspondence, whether official or in relation to subscription for the Government Daily Record, or announcements for publication must be addressed to the General Direction of the National Printery, as well as for periodicals which are part of this newspaper.

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SUMMARY:

MINISTRY OF THE PRESIDENCY.

Decree No. 2:229, published in the supplement of the Daily Record No. 34 of the 23rd of February, regulating the services and taking the necessary measures for maritime transportation authorized

by the law No. 490, in relation to supplying the country with raw material and merchandise or primary necessities.

MINISTRY OF WAR:

Decree No. 2:231, modifying some of the dispositions in the designs of the uniforms for the army.

Decree No. 2:232, maintaining separate officers divisions for heavy and field artillery as decreed in September 11th, 1915.

Decree No. 2:233, appointing the personnel for the permanent division for the target-ranges of the division of Lisbon.

Decree No. 2:234, approving and ordering the execution of the regulations of the National target-ranges.

Regulations referred to in the above mentioned decree.

Ministerial Decree No. 594, dispensing with the copy-sheets referred to in the regulations of the Military Schools, and to put into execution the plans for trials in physical aptitude and the distribution of enrolment-books for the different ranges of these schools in the fiscal year of 1916-1917.

Program referred to in the above mentioned Ministerial Decree.

Decree No. 2:235, authorizing the admission, by contract, of two pharmacists from the civil classes to the Military Hospital of Lisbon, and fixing their salary.

MINISTRY OF MARINE:

Decree No. 2:236, taking over for the services of the Government the German ships anchored in the port of Lisbon.

Decree No. 2:237, regulating the preparatory work for the services of maritime transportation to be made by the ships taken over, according to decrees Nos. 2:229 and 2:236.

MINISTRY OF THE COLONIES:

Ministerial Decree No. 595. It is determined to adjourn until after the war the validity of the Italian Government's decree, of the 2nd of May, 1915, relative to the admission and residence of foreigners in Italy.

MINISTRY OF PUBLIC INSTRUCTION:

Decree No. 2:230, published in the supplement of the Daily Record No. 34, of the 23rd of February, authorizing the seniors of the University to credit the respective students with the marks against them for different motives and applied in the scholastic regulations.

PRESIDENCY OF THE MINISTRY.

DECREE NO. 2:229

(Published in the Supplement of the Daily Record No. 34 of February 23rd.)

In attention to national economic interests, in relation to the maritime transporation measures

which are daily becoming more difficult and expensive and the lack of ships being the principal reason for these difficulties;

And considering that such reasons affect the actual problem of livelihood and
for the benefit of public salvation it calls for immediate and urgent measures which must be adapted to the imperious necessities of the country;

And in consideration of the dispositions in order 10 of the Law No. 480, of the 7th of February, 1916;

For this purpose and in harmony with this law the Government resolves to decree the following:

Article 1. All measures for the requisition of maritime transportation, authorized by the law No. 480 on the 7th of February, 1916, shall be made by order of the Minister of Marine or through a delegate representing the maritime authorities at whatever place the ships may be.

#1. If the ships are in Colonial Ports, the requisition shall be made through the referred delegate in this article by order of the Minister of the Colonies.

#2. In cases of urgent necessity, the requisitions can be made by the local authorities, in the name of the respective Ministers.

Art. 2. When this requisition is made, written notification shall be sent, with an order naming the acting parties, addressed to the captain or agents of the ships, owners or charterers, or in de-

fault of these, whosoever should represent them, and the execution shall take place immediately.

#Only insert. The notifications shall be sent with a copy, one being delivered to the person notified and the other one shall be caused to certify the delivery of such notification, by being signed by the person receiving the notification, and should this person not be able to do so or refuses to sign, this shall be witnessed by two witnesses whose names, professions and residences shall be affixed therein.

Art. 3. Once this requisition is complied with, an inventory shall be taken as soon as possible of the cargo and other articles not considered part of the ship.

#1. The maritime authorities shall be present at the inventory and also the Consul of the country to which the ship belongs, or its representative, and the two copies shall be signed by both parties, one shall be assigned to the Commission mentioned in article 5, and the other shall be assigned to the Consulate.

#2. Should the Consular authorities or their representatives not assist in this inventory, after having been properly advised, or when they do not exist in the locality, the maritime authorities shall proceed with this inventory in the presence of two witnesses and all of these shall sign.

#3. The cargo and other articles referred to in this article shall be unloaded and transported at the risk and for the account of the owners; when in

Lisbon these shall be removed to the warehouses of this city, and in other ports of the metropolis and colonies, whatever place assigned by the proper custom house authorities.

Art. 4. The requisitions made under the terms of article 1 and its paragraph shall be confirmed by decree and the ships considered Portuguese.

Art. 5. A commission shall be created, together with the Ministry of Marine, with the following object:

#1. To promote the appraisal of the ships and everything pertaining to them.

(Signed by) W. Stanley Hollis, Consul General.
" Alvaro Augusto Nunes Ribeiro.

#2. To award the amount to be paid for the use of the ships;

#3. To determine the indemnities to be paid through damages, or any deterioration proceeding from the results of the proper use of these ships;

#4. To determine the indemnity to be paid, for any modification made in these ships which might lower their value;

#5. To resolve everything about what is mentioned in reference to supplies and salaries of the

persons who are actually performing these services whether staying in Portuguese Territory or returning to their country.

#Insert 1. The retributions mentioned in No. 2, shall be liquidated in half-yearly payments and shall be deposited in the Bank of General Deposits, and also depositing the corresponding indemnities referred to in Nos. 3 and 4.

#Insert 2. The amounts deposited according to the terms in the above paragraph can be removed by those who have the right to do so, up to the date of the re-transfer of the ships.

Art. 6. The Commission referred to in the above article shall be nominated by the Minister of Marine, and comprised in the following manner:

By 1 captain of the navy and merchant marine, who shall be the president;

By 1 naval construction engineer;

By 1 assistant of the Attorney General of the Republic;

By 1 representative of the Navigation Companies;

By 1 representative of the Commercial Association of Lisbon;

By 1 representative of the Insurance Companies;

By 1 delegate of the Ministry of Finances;

Only insert. The decisions made by this commission shall be submitted to the Ministry of Marine, and by whose final decision it shall abide.

Art. 7. The re-transfer of a ship shall be notified to the owners or their representatives with ten days' previous notice, at the very least, unless agreed to differently and always when possible, this shall be made at the same ports where the requisition was effected.

§1. For the purpose referred to in this article, the owners or their representatives must indicate to the Commission mentioned in article 5, by registered letter, the person residing in Portugal they desire notified.

§2. In default of the above notice mentioned in the preceding paragraph or when this has not been able to take effect owing to the absence of the owners or their representative, the ships after being valued by the appraiser, shall be sold at public auction, properly announced, depositing in the Bank of General Deposits the amount brought by the auction, after having deducted all expenses incurred through this, and all of those incurred because of the inability to perform the above notification.

Art 8. This decree shall be put immediately into execution.

Art. 9. Agreed to revoke all legislation to the contrary.

The Ministers of the different Departments have ordered this executed. Government House of the Republic, February 23rd, 1916—Bernardino Machado—Afonso Costa—Artur R. de Almeida Ribeiro—Joao Catanho de Meneses—

Jose Mendes Ribeiro Norton de Matos—Vitor Hugo de Azevedo Coutinho—Antonio Maria da Silva—Augusto Luis Viera Soares—Alfredo Rodrigues Gaspar—Frederico Antonio Ferriera de Simas.

MINISTRY OF WAR.

Department of the Cabinet.

DECREE No. 2:231.

As it has been necessary to modify the dispositions of the decree of the 25th of August of 1913 and of the 6th of November of the year prior to the last year which introduces several alterations in the designs of the army uniforms; and because of this it is proposed by the Minister of War, to decree that the officers of the different divisions of field artillery, qualified according to the old ranges of the Military School shall use the collar insignia on their riding-coats and dolmans according to fig., 10 of uniform designs published in "ORDERS FOR THE ARMY," No. 16, Series 1. of 1911; and the emblems used by the officers of artillery referred to in line g), of article 19 of the alterations of uniform designs, and approved by decree of the 25th of August 1913, shall be substituted by silver emblems according to fig. 9 of this same alterations, with the same dimensions, according to rank of the division.

The Minister of War has so agreed and has this executed. Government House of the Republic, February 24th, 1916.—BERNARDINO MACHADO—Jose Mendes Ribeiro Norton de Matos.

1st GENERAL DIRECTION.

2nd Department.

DECREE No. 2:232.

The House of Deputies, having, at their session of January 13th of the current year, resolved that it is of unquestionable necessity, that in addition to the orders given in article 465, in the decree enforced by laws of the 25th of May, 1911, and in view of this, that which was enacted and established in article 428 of the same decree, become effective; and in making use of the powers conferred in No. 3 of article 47 of the Political Constitution of the Portuguese Republic, the Minister in like manner proposes the following decree:

Art. 1. That a separate division shall be maintained for artillery officers and field artillery officers, in virtue of the determinations of the decree of the 11th of September, 1915, and in accordance to what is disposed in article 465 and inforced by law of decree enacted on May 25th, 1911.

Art. 2. The promotion of officers for each division referred to in article 1, shall be made inside this same division, according to the terms of article 428, of said article decreed and enforced by law of May the 25th, 1911.

Art. 3. It is agreed to revoke all former dispositions to the contrary.

The Minister of War has so agreed and has this executed. Government House of the Republic, February 24th, 1916.—BERNARDINO MACHADO—Jose Mendes Ribeiro Norton de Matos

4th Department.

DECREE No. 2:233.

Considering that the work, of land condemnation is sufficiently advanced for the alterations and enlargement of the target-practice range of Pedouços, and which shall soon help to augment the efficiency of this range, and for this purpose it is necessary to have the corresponding additional personnel in charge of this target-practice instructions for regular troops as well as civilians;

And considering that the above instructions have augmented considerably since the actual military organization;

And considering that the number of permanent personnel for this course has had to be increased at different times, and even then without satisfying the growing necessities of service for this same course;

And considering that it is convenient to fix definitely and effectively the referred personnel;

It is thereby, proposed by the Minister of War, under the powers conferred in No. 4 of article 47, of the Political Constitution of the Portuguese Republic, to decree that the number of permanent employees for the target-practice range shall consist of the following:

1 Director, a superior officer of Infantry;
1 Assistant-director, Captain of Infantry;
4 Instructors, Lieutenants of Infantry;
2 Second-sergeants, (who shall be considered supernumeries to the unit to which they

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" Alvaro Augusto Nunes Ribeiro.

belong: 5 corporals and 52 soldiers, all of Infantry.

The Minister of War, has so agreed and has this executed. Government House of the Republic February 24th, 1916.—BERNARDINO MACHADO—Jose Mendes Ribeiro Norton de Matos.

DECREE No. 2:234

As it has become necessary to change the rules of the National target-practice approved by decree of November 27th, 1912, it is hereby, under the powers conferred to me in No. 3 of article 47 of the Political Constitution of the Portuguese Republic, decreed that the regulations for the national target-practice shall be approved and ordered for its execution as transcribed hereinafter:

The Minister of War and of Public Works, have so agreed and put this into execution. Government House of the Republic, 24th of February, 1916.—BERNARDINO MACHADO—Jose Mendes Ribeiro Norton de Matos—Antonio Maria da Silva.

REGULATIONS FOR NATIONAL RANGES

1. The National Target-Practice is an institution for the purpose of extending the desire for shooting exercises and target-practice with artillery, and to perfect in theory and practice through these exercises every Portuguese citizen.

2. The directing, financing and superintending of everything in reference to the national shooting-range belongs to the 4th. Department of the 1st. Secretarial Office of War, and exercised through the respective Inspections of Infantry.

II—Shooting-Societies

3. The formation of Shooting-Societies are allowed on all territory of the Republic.

4. It is understood by "Shooting-Societies," all clubs legally organized which have as a purpose the stimulation of target-practice, and preparing citizens to comply with their military service, and procuring in this manner to awake and stimulate, in every way possible, patriotism, and to further the intellectuality and morality of the country.

a) These societies shall be composed either of civilians or soldiers, all having the same equal rights and duties to perform.

b) The Shooting-Societies with this end in view have the right of guarding the physical education through gymnastics, fencing, manual of arms and by military exercises.

5. The societies shall be designated by:

Shooting Club No..... of..... (name of locality), and are not allowed to use any other name.

a) The Societies and Clubs in existence shall be allowed to use a subtitle to their former name in

the following manner: S. S. No. ..... of..... former F.

6. The Shooting-Societies shall operate together with a shooting range.

a) When in any locality there is no shooting-range, the Shooting-Society trying to organize in that locality shall organize with the respective administrating representatives as a Society of Preparatory Military Instructions, and with the aid of the community shall carry into effect the construction of the shooting-range.

b) The Minister of War shall assist in the construction of one of these ranges in each municipality with a sum as large as possible under the respective budget and appoint as well an officer to make a study of it and direct its construction.

7. These Societies shall be divided in two different classes, and can never be organized or be operated unless it has 20 members for a parish, 30 should it come under a municipality and 50 when in the capital of the district.

8. The Shooting-Societies can have an unlimited number of members.

9. Under section 1. are all Shooting-Societies constituted by young men of school age, up to the age of 16 years, being especially instructed with the preliminary instructions and shooting-practice in a reduced range, and the physical development of the members belonging to it. Section 2. shall

be formed by persons of more than 17 years of age, completing their instruction with the practical knowledge of target shooting.

10. The Preparatory Societies of Military Instruction in existence, or those to be organized and continuing under the name of Shooting-Societies according to these rules are permitted to form under section 1., referred to in number 9, having a preceding authorization from the Ministry of War.

a) These Societies shall be exempt of the tax referred to in No. 27.

11. The Societies with the purpose of developing sports and other games pertaining to this, are permitted to join in both sections for Shooting-Societies, modifying their by-laws with the approval of the Ministry of War, being subject to all the dispositions of these regulations.

2. The actual affiliates of the "Uniao dos Atiradores Civis Portugueses" and other shooting associations existing in the country, must, inside of six months from the date of the publishing of these rules, change their by-laws, to conform with these rules, and submitted for higher approval.

13. The Shooting Societies shall be dissolved:

a) when they should have a smaller number of members than those disposed for in No. 7;

b) when they have deviated in a way from the purposes for which they were created or when they are dedicated to political or religious purposes;

c) when, by any manifested act that could affect the military or social discipline;

d) when they are not complying with integrity the purposes for which they were constituted and whenever verified that the equipments for teaching are deficient in comparison to the number of the associates receiving instructions.

In these last three cases the corresponding Inspector of Infantry shall organize the respective proceeding, and this shall be submitted for the final resolutions to the Minister of War.

14. The Shooting-Societies or other that may organize or change and form under the terms of these regulations, and existing in the same District, can join and form into a District Federation.

a) The federated Societies, in no case will lose their administrative autonomy.

15. The District Federations, shall operate in combination with the shooting range of the Capital of the District, and shall be directed by a commission and organized by the officer in charge of the Preparatory Military Instructions (with residence in the district), and by the Director of the shooting range and by such officials who belong to the federated Societies.

a) The president shall be the highest in rank and the oldest graduated officer as explained in the above article;

b) The federal representation, which is obligatory, can be filled by one of its associates or by a delegate appointed from any of the members of the Shooting-Societies of the Capital of the District;

c) In no case shall it be permitted for an individual to have more than one representation.

16. The District Federations do not need special by-laws, and its principal object is

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" Alvaro Augusto Nunes Ribeiro.

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to be of mutual help to the federated societies and for the improvement and uniformity of these instructions and shall have the following special duties:

a) To conduct, together with the military and civil authorities, all federated societies according to the regulations.

b) To strive and develop target practice in these societies, and taking steps to this end should they judge it necessary;

c) Organizing regional contests;

d) Complying with the orders of instruction given by the Inspector of Infantry and complying with the special motives assigned to it;

e) Sending an annual detailed report to the head-quarters of Infantry Inspection, together with statistical reports giving an account of the movements of the societies and the progress made and a statement of the annual instructions given, work accomplished and those to be accomplished in the year to come, results of the annual contests, etc.

17. All federated societies shall be obliged to pay to the District Federation an annual fee, equal to the 15 per cent of the fees paid by all of the members, to be paid in advance and considered due on January 1st.

18. Any federated society, that after the period of thirty days have failed to pay their fees, order No. 29 shall be applicable in this case.

19. The federations shall be called "Federation of Shooting Societies, in the District of ..... (name of the District).

NATIONAL PORTUGUESE FEDERATION OF TARGET PRACTICE

20. The District Federations and the Societies not federated constitute the National Portuguese Federation of Target Practice.

21. The National Portuguese Federation of Target Practice shall have its head-quarters in Lisbon and in its own building.

22. The National Portuguese Federation of Target Practice at their meetings shall have a representative of the District Federations as well as

other societies not federated, a delegate shall be appointed for each federation and one for the societies not federated.

a) This representation which is obligatory shall be made according to the terms in line b), of number 15.

23. No delegate can represent more than one society, and all resolutions passed in their meetings shall be valid if voted by the majority of the delegates present, and this must be half plus one of the representatives at the first meeting, not having the 30 original members counted for this purpose, and at the second meeting any number with the right to a vote when present, as agreed.

24. The societies not federated according to district, shall send to the National Federation the proposal for their candidacy as assigned by their Directors, together with a copy of their approved by-laws and list of their members.

a). These societies are also obliged to send a report, according to line e) of number 16, which shall be sent immediately to the corresponding Inspection of Infantry.

25. After the proposal has been received, the National Federation shall remit this copy to the corresponding District Federation, and when no opposition has been made during the period of thirty days, a resolution of admittance shall be passed.

a). All opposition shall be properly established.

26. Should there be any opposition, this shall be [illegible] from a decision

27. The federated as well as the non-federated societies shall contribute to the Portuguese National Federation of Target Practice, with an annual quota, paying in advance a fee equal to the 5 per cent, according to the total of their balance-sheets. The modification of the terms in No. 11, for different sports shall also pay a 20 per cent of the total quota of their members subscribing to each of these sports.

28. This contribution shall be considered due on the 30th of January of each year.

29. The District Federations or non-federated Societies who do not pay these fees within thirty days after these are due, shall be excluded from the National Portuguese Federation of Target Practice and dissolved; and shall not be re-admitted unless a special vote to this effect is taken and after a payment is made of all their debts up to date, plus a fine equivalent to a two yearly quota.

30. Besides the members representing the different Societies, the National Portuguese Federation of Target-Practice shall also have as members:

a). A president, named by the Ministry of War, for the period of two years;

b). A chief from the 4th Department of the 1st. General Head-quarters of the Secretary of War;

c). A section chief of the same Department, who shall be in charge of the instructions and target practice;

d). The Directors of the shooting ranges of Lisbon;

31. The meetings of the National Portuguese Federation of Target Practice shall take place at the same time when the national contests are on, allowing them the necessary time to compete for the following:

a). Election of the managing board;

b). Election of the elective members of the technical commission;

c). Election of the propaganda commission;

d). Election of the executive commission;

e). Approval of the accounting of the former managing board;

f). The presentation and discussion of all proposals and matter of general interests;

g). The organizing and discussion of the program for the national contests, when these have not been already organized by the Ministry of War, and other matters which should be settled and put before the board before the 31st. of March.

32. The Technical Commission shall be formed by the two persons mentioned in lines c) and d) of number 30, under the presidency of the Chief of the 4th. Department of the War Office and 5 elected officers.

33. The Propaganda Commission shall be formed by 5 members, also elected.

34. The Executive Committee shall be formed by a President, Vice-president, Treasurer two Secretaries, two actual officers and two substitutes and administrate the National Federation.

35. The Committee of the National Portuguese Federation of Target Practice can have extraordinary meetings:

a) When convoked by the Board of Directors;

b) When a meeting is solicited by more than half of the societies, in this case the meeting shall convoke with two thirds of the signers for the meeting present;

c) When ordered by the Minister of War, who in this case shall pay both ways the transportations expenses of the representatives;

36. Besides the advantages conceded by No. 95. the Government shall also concede to the members of the Federated Societies and through their intermedium a reduction of 25 per cent of the prices for all cartridges used in their free sessions.

37. The National Portuguese Federation of Target Practice, has as a particular object in view the following:

a). To help establish ranges when none and find suitable localities for these, endeavouring for this purpose to obtain the pecuniary co-operation by popular appeal and of the interested societies;

b) To contribute in such manner that the official contests shall have the maximum results either by offering memberships or by the offer of prices:

c). By promoting special shooting contests, tournaments and championships among its members exclusively, and with the admission of foreign contestants when judged necessary, awarding prices and publishing notices, with the understanding that the programs shall have the approval of the higher officers;

d) At the promotion of national and international contests all Shooting Societies shall be represented;

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" Alvaro Augusto Nunes Ribeiro.

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e) To make propaganda through newspapers and other publications, bills and illustrated posters, for the development of the national target practice by public meeting and all other legal means judged convenient and efficient in a manner to awaken the greatest enthusiasm among the Portuguese population;

f) To try and maintain relations with all similar foreign associations by means of direct correspondence or by means of publications.

g) To keep records of the winning contestants of tournaments, championships, local and regional contests.

111 Shooting Instructions

38. The period of target practice instructions shall be between the 1st of March and 31st of October for all ranges, except those of Lisbon and Porto, which shall remain open permanently.

39. The exercises of target practice shall be as follows:

a) In Lisbon and Porto, shall be during all the year, every day and at hours appointed for the instruction of troops;

b) In other localities, on Sundays and holidays, and during other days of the week when so decided by the Inspector of Infantry.

40. The exercises of target practice shall be understood as:

a) Shooting with rest, when and as established by the regulations of infantry target practice;

b) Shooting without rest, with any portable arms, including revolvers, when they are judged to be in good condition by the director of the range.

Practice Shooting

41. The shooting instructions shall always be in harmony with the precepts of the established regulations of infantry rifle practice.

42. The following rules shall be adhered to in the instructions of the preliminary exercises held

in the barracks, in the quarters of the Shooting Societies, and in all teaching establishments, either official or private.

43. It is absolutely indispensable to become a good marksman to hold the rifle firmly and to know how to shoot under all conditions and in these exercises he must give special attention to the instructor.

44. All members of the army and those belonging to the various divisions may exercise in the free open shooting sessions by paying for the ammunition used, at the prices established, less 25 per cent. discount.

IV—Enrolment of sharp-shooters; registration of shooting and register Card of identification

45. All native or naturalized Portuguese are allowed to enroll in the ranges when they reach the age of seventeen years, and minors from 12 to 17 years of age as well as women can have the right to practice with fire arms of short range and of any type, not being obliged to register under the terms of this regulation.

46. All foreigners more than 21 years of age, resident of Portugal, are permitted to practice on the rifle ranges during free session, after having procured the required authorization from the ministry of war.

47. At each range the names of the shooters shall be inscribed in an enrolment book and they shall fill in the blank spaces the information required with truthfulness.

48. The enrolment-books under the following series shall be open to the shooters;

Series A—Territorial troops, not having served in the army;

Series B—Civilians.

49. In each range the shooters shall form in two sections:

To the first section belong all those who are enrolled; To the second section those who have applied for transfer of their enrollment.

a) The shooters of section 1 shall be numbered consecutively within each series, and according to chronological order according to their enrollment papers;

b) The shooters belonging to section 2 shall retain the number which they held in their first range and where they enrolled.

50. All members of the army whatever rank or regiment they belong to, are not allowed to enroll under the rules of this regulation, being limited to practice at the free shooting sessions and the rule established by the infantry shooting practice.

51. The director of ranges shall have entrance to the directing quarters of the Shooting Societies under its jurisdiction, according to the District in which they operate, so as to permit these directors to know at all times, the number of their associates and the number of shooters inscribed as members, obtaining in this manner the advantages conceded in No. 36 for these societies.

a) This obligation shall also be applied to the non-federated societies, although they do not participate in this benefit.

52. The reports with the shooting results shall follow the directions of the infantry shooting regulations already established or to be established for the instruction of troops.

53. The Shooting Societies and the directors of preparatory military instruction centers jointly with the directors of the ranges, shall organize individual records (based on a book-keeping system) and according to models Nos. 2, 3, 4 and 5, registering the results of the shooting sessions by shooters of series A.

54. These individual records, put together under a cover according to No. 6 constituting the individual records of shooters, which, together with the other papers properly indexed, shall make up the files of the NATIONAL TARGET PRACTICE register.

55. When all series of advancement are completed, and the book-keeping records or their duplicates, properly authenticated by the directors of the different ranges are completed, these shall be sent to the president of the Shooting Societies when they can be personally delivered to their associate, by means of a signed receipt.

56. The results of the shooting shall always be transcribed from the memorandum-book of the range personnel.

57. When a sharp-shooter changes his residence and has his matriculation transferred to another range, the director of this last place shall demand

from him an authenticated copy of the respective individual record and enrollment blank, so as to be able to continue this book-keeping.

58. The shooters who have transferred according to the preceding number and have opened a new inscription in the range under section 2 but without a new order number but the one he had in the range where he came from.

59. Besides these individual records and a general register, to be able to estimate the movements in the ranges, contests, prizes distributed, etc.

60. The ammunition with a free donation as well as the payment of these shall be made by the shooters at the ranges and always at the moment of their use; at the moment of using these, personal proofs shall be offered and only in exchange for this will it be supplied.

61. It is absolutely obligatory for the shooter to have his identification card.

62. The members of the Shooting Societies, Preparatory Military Instruction and sports to use cards issued by these societies, presenting these at the first session so as to fill the blanks at the ranges and have it signed by the director should there be one.

(Signed by) W. Stanley Hollis, Consul General.
" Alvaro Augusto Nunes Ribeiro.

63. The non-affiliated shooters of any of these societies or of those societies who have not adopted the identification card system shall be obliged to follow the instructions in No. 7, and furnished at the ranges.

64. At the presentation of the shooters of their identification card, the shooter shall have the sufficient rights to practice shooting at the free session of any range of the country.

V.—TOURNAMENTS, CHAMPIONSHIPS AND CONTESTS: CLASSIFICATION AND PRIZES FOR SHOOTERS.

65. Official contests shall be held annually; and these shall be local, provincial and national.

a). The local contests shall be organized by the society or societies existing in a parish or council and any person inscribed at the respective ranges can compete:

b). The provincial contests shall be organized by the respective District Federations and if these should not be in existence, the societies of the same district with the intervention of the person in charge of the Preparatory Military Instructions and the range Director; and all shooters inscribed in the district ranges may compete.

c). At the national contests, when not organized by the Minister of War, shall be according to the program established by the National Portuguese

Federation of Target Practice and taking place at the commemoration or anniversary of the proclamation of the Portuguese Republic, when all natives and foreign resident shooters may compete.

Foreigners cannot, nevertheless, participate in the contests which are considered National as the—GOMEZ FREIRE and NATIONAL CHAMPIONSHIP OF PORTUGAL.

66. The rules for local and provincial contests are as follows:

ADMISSION

a). Group A, for all shooters who are prize-winners of any local, provincial, national or international contests:

b). Group B, for all shooters, with the exception of those inscribed in the ranges during the year:

c). Group C, for all shooters inscribed in the ranges during the year:

The shooters of group B and C, when they once have been awarded a prize, shall in all future contests be classified respectively either to group A or B.

SERIES—15 shots in 3 series of 5.

POSITION—5 shots lying down, 5 shots kneeling, and 5 shots standing (this order is arbitrary)

ARMS—6^{mm} rifle, 5 (m/904)

AMMUNITION—Free.

TARGET—Circular with 10 rings, one metre in diametre, 0^{m}, 60 visual.

DISTANCE—300 metres.

CLASSIFICATION:

Each group shall be classified by the largest number of points obtained.

DECISION:

1. By the largest number of hits.

2. By the largest number of hits in the standing series.

3. By the largest number of hits in the kneeling series.

67. In all contests the promoters shall be responsible for the distribution of the prizes according to the rules in the program.

INTERNATIONAL CONTESTS.

68. Once the Pedroucos range is terminated and in condition to be used, all international contests may be held in Lisbon, when all foreign Shooting Societies shall be invited through the National Portuguese Federation of Target Practice, with the previous authority of the Minister of War.

69. The general results of the national and international contests and the names of the individuals or societies who have offered prizes shall be published in the "Army Orders."

ADVANTAGES CONCEDED TO CONTESTANTS FOR THE NATIONAL AND INTERNATIONAL CONTESTS.

The prizes shall consist of:

70. Kind { (a) art objects; (b) monies.

Medals.

Badges.

71. Prizes of art objects as a rule, shall be assigned only to the GOMEZ FREIRE class, although the program may establish others.

72. The medals, which shall only be awarded for contests of the same category as the art objects were assigned to—GOMEZ FREIRE—shall be grouped with other prizes and will consist of: one gold medal and twenty silver ones for each one-hundred shooters inscribed, or of a fraction of one-hundred and more than 50.

73. When money prizes are distributed, these as a rule shall be given to all other classes.

74. To the category receiving Honor Prizes, these shall consist of gold medals, except in the COLLECTIVE CHAMPIONSHIP, when art objects specially appropriated for this shall be awarded.

75. Badges or insignias shall be awarded to record holding shooters and these shall be conferred one per event, having engraved annually thereon the year and distance of the contest competed.

76. All prizes awarded shall be accompanied by their respective diplomas.

77. Medals and diplomas awarded to military men shall be sent directly to the respective corps of divisions in which they serve, and to be given whenever circumstances permit by the commanding officers when in troup formation, taking advantage of the occasion to laud the patriotic motives of this act, and pointing out the importance of knowing how to shoot in this modern era.

78. The awarding of art objects as prizes for groups A, B and C, according to the classes which the distribution is destined for, shall be observed in a general manner as follows:

The disposal of the prizes for series, shall be according to the order of their value, and distributed to the three lots, A1, B1 and C1, in harmony to the number of shooters inscribed in these groups A, B and C. Each of these lots A1, B1 and C1, shall be separated in three others in the following manner:

a	a′	a″	A1
b	b′	b″	B1
c	c′	c″	C1

And with these lots the following lots shall be formed:

a	b	c	(A)
a′	b′	c′	(B)
a″	b″	c″	(C)

We shall obtain finally the prizes which must be distributed accordingly to groups A, B and C, being a (b or c), a′ (b′ or c′), and a″ (b″ and c″) the lots of prizes of successive decreasing value.

(Signed by) W. Stanley Hollis, Consul General.
" Alvaro Augusto Nunes Ribeiro

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79. The awarding of prizes to shooters inside of these groups, shall begin by those with the highest classifications, and they shall be able to choose any prize allotted to be distributed of that lot.

80. The distribution of the prizes shall be awarded on the same day of the contests or on any other day in the course of 8 days, and this act shall be performed with all solemnity.

81. To the winning division or military camp of the Collective Championship shall be applied the rules of the infantry target practice regulations ordered for the shooting championships.

82. When a regimental band is present at the ranges, this shall be asked to play during the solemn moments of prize distribution.

2.

Railroad Transportation

83. All sharp-shooters affiliated to the Shooting Societies, and taking part in the contests, shall be allowed free transportation on all State railroads to Lisbon and back to their home towns.

For this purpose their names shall be sent by the directors of the ranges to the Commandant of the 1st. Division of the army when the contestants are military men, and to the president of a jury when civilians, so that with proper attention they shall pass to the respective guides. On their return the jury shall verify their attendance to the contests.

3.

Distinctive Classification for Shooters

84. All shooters who within the terms of the regulations of infantry target practice have completed their individual target practice shall be conceded the corresponding distinctive classification.

85. Special sharp-shooters shall be given their respective diplomas, which shall be solicited from the Minister of war.

VI. Juries

86. To award the results obtained in the tournaments and championship, and promoted by groups

of shooters of these same societies, a jury shall be formed of the director of the range, the president of the Shooting Society and three officers named by them.

87. In the results of the tournaments and championships, as well as local contests the jury shall be formed by;

President:

An officer of infantry, delegated by the inspector of infantry for the division of the regiment in which the range is located.

Officers

The Director of the range
The administrator of the Council or his delegate
An alderman of the Municipal Council
A president or delegate of the contesting Shooting Societies, federated or not.

Secretary

An inferior officer of infantry

88. At provincial contests the jury shall be formed thus:

President

An inspector of infantry or his delegate

Officers

The civil governor of the district or his delegate.
The director of the shooting range.

The administrator of the council or his delegate

An alderman of the Municipal Council

A president or delegate of the shooting Societies present, either federated or not.

Secretary

An inferior officer of infantry.

89. The officers shall be appointed by the Ministry of War, and the other members who have not been elected to their positions, shall be appointed by the corresponding inspector of infantry.

90. For the National and Inter-National contests the jury shall be nominated by the Ministry of War before the 15th of April and shall be as follows;

President

A General

Officers

The inspector of infantry of the 1st Division of the Army.

Chief of the 4th department of the first Direction General of the Secretarial Office of War or its delegate.

An officer of the Navy

An officer of the Engineer Corps

An officer of Artillery

An officer of Cavalry

A director of the Target Range of Pedrouços

Two Captains of Infantry

A delegate of the Municipal Council of Lisbon

A delegate of the National Portuguese Federation of Target Practice

Three delegates elected by the Shooting Societies

Three delegates elected by the Societies of Preparatory Military Instruction

Three delegates of the newspapers, elected by the directors and journalists of Lisbon's newspapers.

Secretary

A captain or lieutenant of infantry.

91. The president of the jury shall name from among the above appointed persons the necessary number, as he may judge fit, to form the following commissions;

a) directing committee

b) executive committee

c) Propaganda committee

92. The directing Committee have the following duties:

a) To superintend all services, authorize the inscription of individuals who care to do so before the appointed time and after enclosing in their request the identification card, etc.:

b) To adjudge all cases that may arise and not provided for in the regulations, and also all un foreseen claims;

c) Modifying any disposition made in the program, whenever they consider it necessary, except those made for prizes and disposed accordingly for each class, and those modifications must be published on the bulletin board of the range.

93. The Executive Committee have the following duties:

a) To comply with the orders issued by the directing Committee regulating all contests measures, so as to be able to attend to all complaints, whenever possible, of the shooters outside of Lisbon, and proposing to the directing committee the execution of all works they may deem necessary;

b) Verifying with great care the records of the shooting results and make the necessary classification, giving it out for publication and being responsible with the jury for the strict observance of the regulations;

c) To resolve and decide, at the moment, by listening at the offices of the range, all matters pertaining to claims, and the respective books shall always be presented before the directing committee justifying their resolutions;

d) Verifying the compliance of the record services requesting from the Director of Ranges the necessary officers needed to direct the shelters, and also the number of officers necessary to help compare the score cards and the records or registration blanks.

e) To verify, by legal documents, in which group or section the shooters should be inscribed

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(Signed by) W. Stanley Hollis, Consul General.
" Alvaro Augusto Nunes Ribeiro.

when there is a demand for such made for some special class or group;

f). To classify the different categories of the program to harmonize with the condition demanded for each event, and have it published at the proper time.

g). To verify the number of rifles employed:

h). To demand daily from the Director of the range the arrangements of services for the next day;

i). The secretary of the Executive Committee shall act as secretary for the jury;

91. The Propaganda Committee have the following duties:

a). To try and procure the necessary prizes from different people or different societies:

b). To succeed in securing from all newspapers, principally those of the capital, to publish the results of the contests and help in an intense propaganda for rifle-practice, attracting towards this branch of national instruction the attention of the public;

c). To try and develop a desire for rifle practice in such a manner that this would become a national diversion of the Portuguese public.

VII—ARMS AND AMMUNITIONS

95. The Government shall provide:

1. The necessary material for instruction according to the regulations.

2. The necessary personnel for theoretical and practical instructions.

3. Portable arms of the same models as used by the army.

4. To each inscribed member shall be given:

The necessary number of cartridges needed for his instructions as ordered in the regulation of target practice for infantry recruits.

96. The classification of target practice shall be made according to the rules of the recruits school; the individuals who are not under military service may also shoot, by always paying for the ammunition.

97. To perfect their shooting the shooters can repeat this practice and be classified but by paying for the ammunition used.

98. Necessary cartridges for the repetition of classified shooting and practice referred to in the preceding number shall be sold with a concession of a 25 per cent. rebate from the official prices.

99. The portable arms employed, shall be the same as those used by the army, and of the same class as those the infantry is armed with.

In the free shooting, they may employ any gun once they have satisfied the conditions in line b) of number 40, and contained in the following rules:

a). War arms (muskets, rifles and pistols of the regulation models);

b). War arms, with range finders and modified sighting devises or not;

c). Small arms of precision;

d). Arms of short range and reduced calibre of any system either for ladies or minors.

100. All shooters may rent for their private use, during contests, tournaments and championships one or more rifles, for the price of $1.20 each.

101. All shooters may reserve for their private use one or more rifles, for the price of $10 each.

102. The monies received from the renting or reservation of arms shall be destined for buying portable arms.

103. The rifles rented or reserved may not be used by anybody else but the person renting or reserving these.

104. It is absolutely necessary to present the respective bill every time the shooters shall make use of the reserved or rented rifle.

105. The dispositions in No. 100 shall be applied also to all guns in regular use for the army.

106. At contests, the Ministry of War may authorize the change from one to another range of the arms reserved, or any others.

To those granted this concession shall pay for the transportation of these arms both ways, and the sum of 1$20 each for those not reserved, which shall then be considered rented for use in the said contests.

107. Excepting in disposition Nos. 36, 44 and 98, the ammunition when paid for, shall be sold at the rate of two cent for each cartridge and 1,5 cents for pistols, and shall only be furnished at the shooting line.

108. The cartridge boxes are Government property and cannot be taken away by the shooters.

109. The shooters may acquire other models or types of fire-arms, when those offer the proper guaranty of safety and assurance of their precision and can be used with cartridges provided by the Ministry of War, but with the expressed condition that they shall be left for use at the range according to rules.

110. The safety and precision, as well as the quality of ammunition used in the fire arms brought by shooters, shall be approved by the Director of the respective ranges.

111. The shooters who have reserved rifles may apply more pointed sighting devises as long as they have the same height and may elongate the grooves

in the range finders without losing by this the quality of "war arms."

112. It is also permitted, with rifles which are reserved, to use range finders with other devises, as well as the modification of the sight referred to in the preceding number, in which case the rifle shall be considered under the terms of line b) of No. 99.

113. When with reserved rifles the use of range finders and other devises are permitted, they may also employ the modified high sight, but only when the protective sides exceed.

114. It is prohibited to introduce any devises to the shooting mechanism of arms which come under the terms in line a) and b) of No. 99.

115. It is prohibited to make use of any optic aiming devise in shooting sessions, which have classification value, but notwithstanding, binoculars may be used for observation purposes.

116. The trigger when released must not have a lesser force than 2 kilogram; and for the verification of these last condition, the weight must be attached to the middle of the trigger.

VII—RULES FOR SHOOTERS

MEASURES FOR ORDER, POLICING AND SECURITY

117. The shooters, whatever the class or distinction of rank or degree, while in the ranges, or at

the shooting exercises, must obey all regulations made by the personnel of the range, in all matters pertaining to the technical part of the ranges, as well as discipline at the ranges.

a). The duties imposed in this article do not deprive the shooters of the right of complaining against any act that they may consider as abusive and practised by the instruction personnel of the range.

118. In admitting the public to the range they must, during sessions obey all measures policing and security orders established by the Director or his representatives and these must be rigorously observed.

119. Any violation of the service orders or inattention from the personnel of the ranges after proper steps have been taken in the matter, the infractor shall be tem-

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(Signed by) W. Stanley Hollis, Consul General.
" Alvaro Augusto Nunes Ribeiro.

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porarily or permanently suspended, according to the gravity of the fault committed.

120. The temporary suspension shall be determined by the Director of the range, and the subordinate may apply for recourse of this penalty to

the Infantry headquarters to which the range is attached.

121. The permanent suspension cannot be determined by the Infantry headquarters to which the range is attached to, but in this case shall apply to the recourse of the 4th Department of the 1st Headquarters General of the Secretary of War Offices.

122. When graver faults affecting the discipline are committed by the personnel of the ranges, either by words, threats or other manifestations, the infractor shall be immediately arrested and sent to the respective Judicial Authorities.

123. It is prohibited:

a). To open fire before the proper signal has been given, or to continue firing after the signal to cease has been given;

b). To load the guns out of the shooting line;

c). To leave the shooting line, or to walk through the building with a loaded gun;

d). To have the gun although discharged, with the barrel pointing into the air, and the breech open;

e). To have the gun pointed at somebody, although discharged;

f). To leave the gun in the rack with the breech closed;

g). Addressing a shooters when aiming and ready to fire;

h). To make any movement to open or close the breech or set the trigger without having the barrel pointed toward the target;

i). Not to use rented arms or those reserved or verified;

j). Always when the shooter is interrupted in this shooting sessions by an order to cease firing he shall take his place in front of the shooting platform with the breech open and the arm at rest.

124. It is prohibited to talk loud in the inclosure of the range or to practice or do anything which may disturb the regular shooting sessions or distract the shooters.

125. Individuals who are simply spectators cannot on any account occupy the place reserved for the shooters.

126. The shelters cannot be visited without a special authorization from the Director of the range or his representative.

127. Shooters should only load their guns at the moment of firing.

128. The loading shall be made shot after shot, unless a cartridge clip is used.

129. In front of every shooter shall be placed a rack holding the exact number of cartridges to be fired at each series.

IX—DIFFERENT DISPOSITIONS

130. After the formation of the National Portuguese Federation of Target Practice the plan for a distinctive mark for its members, Federated Societies and banners for these same societies shall be submitted for the approval of the Ministry of War.

131. No range planned by private or local initiative can be constructed and begin to operate unless this plan has been submitted to the Ministry of War and obtained the necessary approval.

a). When a range has been abandoned or condemned, although created by private or local initiative, or through the dissolution of the society which made it, all the material for instruction and arms, even though acquired by private property and of persons duly authorized to have them, shall revert to the Ministry of War.

132. The installation of the reduced shooting galleries depend on the approval and fiscalization of the corresponding Infantry head-quarters.

X—GENERAL DISPOSITION

133. The enrollment of the shooters, as determined, shall be performed immediately.

134. For the shooters who have enrolled before, a new enrollment book shall be opened according to the terms of these regulations where they shall re-enroll as they appear.

135. The shooters who do not enroll again shall be placed in the extinct series list.

136. The shooters who according to the preceding terms of this regulation and who have already been provided with one hundred cartridges to be used according to the orders of list 2 and class 1, shall cease to have this free donation.

137. Members in Lisbon belonging to the United Civil Portuguese Shooters, shall change their organization and reorganize as a Shooting Society, taking under their charge the assets and liabilities of their former organization.

138. In consideration of the many services rendered to the national target-practice by the United Civil Portuguese Shooters, and in view that this association from now on is included under the No. 7 of these regulations, it shall be known and inscribed under the name of Shooting Society No. 1, and may use as a sub-title the name by which they are actually known and designated.

Government House of the Republic, February 24th, 1916.—JOSE MENDES RIBEIRO NORTON DE MATOS.—Antonio Maria da Silva.

(The models referred to in this decree are published in the edition of the "Army Orders" No. 2, 1st Series, of the 24th of February.)

MINISTERIAL DECREE NO. 594.

As it was not possible to comply in full with the dispositions of # insert 3, of Article 67 of Regulations for Military Schools, and taking into consideration that it is not so much the necessity for promotions as the absence of minor officers in some of the divisions that makes it indispensable for the good of the service to augment the number of candidates for admittance to the Military Schools, and to facilitate as much as possible this same admittance: The Government of the Portuguese Republic orders through the Ministry of War and in conformity with the unanimous deliberation of the Council of Instructions of said school, to dispense at the next scholastic term of 1916-1917 with the written essays referred to in Article 56 and 65 of the mentioned school regulations, and to publish and put into execution the plans for the trials of physical efficiency necessary for admission and enrollment in the different army courses and for military administration of the scholastic term of 1916-1917, and approved by that Council of Instruction, according to terms in # insert 3 of Article 67 for Military School regulations.

PLANS FOR PHYSICAL EFFICIENCY TRIALS AND FOR ADMISSION AND ENROLLMENT IN THE DIFFERENT ARMY COURSES AND FOR THE MILITARY ADMINISTRATION OF THE SCHOLASTIC TERMS OF 1916-1917 REFERRED TO IN THE MINISTERIAL DECREE OF THIS DATE.

These trials shall consist of the following exercises:

1. To run over a course of 100 metres in 5 minutes.

2. A running jump over a stone wall 0m.80 in height and of 0m.10 in width at the top.

3. Running jump over a ditch of 2m.8 in width with 1m.2 in depth, with a slope of an inclination of 2/1.

4. Climbing up a rope to a height of 2m.5.

5. Walking on a horizontal beam of wood of 5 metres in length and placed at 2 metres high from the ground.

(Signed by) W. Stanley Hollis, Consul General.
" Alvaro Augusto Nunes Ribeiro.

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6. Throwing a weight of 4k 750 to a distance of 4 meters.

The candidates have the right of repeating in 18 seconds.

The candidates have the right of repeating once the jump, throwing the weight and walking on the beam exercises.

The exercises shall be executed in the indicated order as given above, having the minimum interval of three minutes after exercises No. 1 and 6, and 5

minutes after No. 3, the other exercises shall be done one after the other in succession.

The distance between the stone wall and the ditch shall be of thirty metres.

The non-execution of any of these exercises means the exclusion of the candidate.

Government House of the Republic, February 24th, 1916.—JOSE MENDES RIBEIRO NORTON DE MATOS.

2nd. GENERAL DIRECTION.

DEPARTMENT 5.

DECREE NO. 2:235.

As it is necessary to fix the wages to be paid the assistants from civil pharmacies and who were pressed into service owing to the urgent need of pharmacists for the Military Hospital of Lisbon, services which have grown to a great extent since some time past; and in accordance to the dispositions in article 21, with the object of changing the public accountancies, and approved by the law of the 20th of March, 1907, and because of this the following is decreed:

Only Article. In regards to the Military Hospital of Lisbon and the settlement to be made for the auxiliary pharmacist and indispensable for the performing of the necessary services, two civil

assistant pharmacists may be engaged, each receiving for such extraordinary services a no larger remuneration than 25$00 per month, and paid for from the amount of 6.260$00, according to article 8 chapter 1 and unfolded in the budget for expenses for the fiscal year of 1915-1916, and agreed to by the law of August 31, 1915.

The Minister of War has so agreed and has this executed—Government House of the Republic, February 24th, 1916.—BERNARDINO MACHADO—JOSE MENDES RIBEIRO NORTON DE MATOS.

MINISTRY OF MARINE.

Offices of the Minister.

DECREE No. 2:236.

Making use of the power conceded me by law No. 480, of February the 7th of 1916, and according to the terms of decree No. 2:229, of the 23rd of the same month, and by proposal of the Government, I hereby decree the following:

Only Article. The ships hereinafter mentioned anchored at the port of Lisbon shall be requisitioned for the services of the Government:

GERMAN:	Tons
ARKADIA	1:106
ACHILLES	580
ANTARES	1:529
BULOW	5:034

CASA BLANCA	1:043
CHERUSKIA	2:047
ENOS	1:210
EURIPOS	1:747
ELECTRA	417
ENERGIC	452
GALATA	2:580
GIRGENTE	1:036
JAFFA	1:263
LANECK	786
LUBECK	1:055
MILOS	1:758
MAZAGAN	1:110
MOGADOR	785
MAILAND	1:030
MINA SCHULDT	616
MAXOS	1:389
NEWVA	98
PICADOR	327
PLUTO	892
PRINZ HENRICK	3:386
PHOENICIA	2:185
ROLANDSECK	757
ROTTERDAM	1:385
RHODOS	1:220
SOPHIE RICKEMERS	2.262
TAYGETOS	1:817
UCKERMARK	2:652
WUTEMBERG	4:829
WESTERVALD	2:390
SANTA URSULA	2:340

The Ministers of the different Departments have thus agreed to have this executed. Government

House of the Republic, 24th of February of 1916.—BERNARDINO MACHADO—Afonso Costa—Artur R. de Almeida Ribeiro—Joao Catanho—de Meneses—Jose Mendes Ribeiro Norton de Matos—Vitor Hugo de Azevedo Coutinho—Augusto Luis Viera Soares—Antonio Maria da Silva—Alfredo Rodrigues Gaspar—Frederico Antonio Ferreira de Simas.

DECREE No. 2:237.

As there is urgent necessity to attend and initiate the preparatory work for the services of maritime transportation to be made by the requisitioned ships, in accordance to decree No. 2:229, of the 23rd, of February of 1916, and putting into effect this power which has been conferred on me by the law No. 373 of September 2, 1915, and No. 480 of February 7th, 1916: and with this purpose, the Government proposes to decree the following:

Article 1. The requisitioned ships, in accordance to decree No. 2:229 of the 23rd of February of 1916 the requisition of which was confirmed by decree No. 2:236 of the 24th of February of 1916, are from now on under the administration of a Commission composed as follows:

1 Officer of the Navy.

1 Officer Engineer.

1 Officer of the Naval Administration.

Art. 2. The duties of this Commission, with the approval of the Minister of the Navy are:

1. To promote, when they should judge it convenient, all indispensable duties, reparations and application of the requisitioned ships;

2. To acquire material for permanent use or consumption, should it be necessary for their services;

3. To consult with technical persons when necessary;

4. To engage the office staff and management needed.

Art. 3. A special credit is opened with Ministry of Finance in favor of the Ministry of Marine for the sum of 600.000$ to cover the first expenses that may result from the execution of this decree and from decree No. 2:229 of the 23rd, of February, 1916.

Art. 5. It is agreed to revoke all legislation to the contrary.

The Ministers of all the Departments have so agreed and have this executed.

(Signed by) W. Stanley Hollis, Consul General.
" Alvaro Augusto Nunes Ribeiro.

Government House of the Republic, February 24, 1916.—Bernardo Machado—Afonso Costa—Atur R. de Almeida Ribeiro—Joao Catanho de Meneses—Jose Mendes Ribeiro Norton de Matos—Vitor Hugo de Azevedo Coutinho—Augusto Luis Vieira Soares—Antonio Maria da Silva—Alfredo Rodrigues Gaspar—Frederico Antonio Ferreira de Simas—

MINISTRY OF THE COLONIES

GENERAL DIRECTION FOR THE COLONIES

Department 6.

MINISTERIAL DECREE NO. 595

To the Governors of the Provinces beyond the seas for their direction and convenience: By order of the Government of the Portuguese Republic it is communicated that the time set for the validity of the Royal Italian Decree, of May 2nd of the past year, in relation to the residence of foreigners in Italy has been abrogated until after the war, and referred to in the Ministerial Decree of the 9th of June, 1915, and published in the "Government Daily Record" No. 110, 1st Series, of the 11th of the same month and year.

Government House of the Portuguese Republic, February 24, 1916.—The Minister for the Colonies, ALFREDO RODRIGUES GASPAR.

MINISTRY OF PUBLIC INSTRUCTION

DEPARTMENT OF INSTRUCTION FOR UNIVERSITIES

DECREE No. 2:230

Having in consideration the dispositions in law No. 478, of January 29th, 1916, and in articles 33, No. 5, and 87 of the decree-law of April 19, 1911:

And exercising the powers conferred on me by No. 3 of article 47, of the Political Constitution of the Portuguese Republic:

It is hereby agreed by sanction of the Minister of Public Instruction, to decree the following:

Article 1. The Deans of the Universities of the Republic and School Councils of higher education, not affiliated to the Universities, shall be authorized to accept the absence excuses given by students in the respective theoretical courses and practical courses, when they deem that these absences are justified if determined by any doubtful motive or interpretation and application of the scholastic regulations.

Art. 2. This decree shall be enforced immediately.

Art. 3. It is agreed to revoke all dispositions to the contrary.

The Minister of Public Instruction has so agreed and has this executed. Government House of the

Republic, February 23rd, 1916.—BERNARDINO MACHADO—Frederico Antonio Ferreira da Simas.

(Signed by) W. Stanley Hollis, Consul General.
" Alvaro Augusto Nunes Ribeiro.

National Printery of Lisbon.

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FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

222 CLERK'S CERTIFICATE TO EXHIBITS.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States for the Southern District of New York, do hereby Certify that the Writings annexed to this Certificate have been compared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom and of the whole of the said originals.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Court at the City of New York, in the Southern District of New York, this 12th day of September in the year of our Lord One Thousand Nine Hundred and twenty-two, and of the Independence of the said United States the One Hundred and Forty-seventh. Alex. Gilchrist, Jr., Clerk. (Seal.)

223 United States District Court, Southern District of New York.

[Title omitted.]

EVIDENCE: DEFENDANT'S EXHIBIT B.

[Filed Mar. 10, 1923.]

To the Honorable the Judges of the United States District Court for the Southern District of New York:

Now, into this Honorable Court, comes the representative of Portugal, through His Excellency Visconde d'Alte, its Envoy Extraordinary, and Plenipotentiary Minister to the United States of America, duly accredited and recognized, and appearing specially as amici curiæ informs this Court:

First.

That in the above entitled cause, an action was instituted in the United States District Court for the Southern District of New York upon claims for an alleged breach of contract with an alien seaman on board the Steamship "Goa," owned by the Transportes Maritimos do Estado, and demands judgment in the sum of Four hundred and eighty-five dollars ($485). In the above entitled action the said Transportes Maritimos do Estado appeared through its Acting Consul-General at New York, Honorable Jose R. Prista, under a mistake of our law, which being a law to it of a foreign country, amounted to a mistake of fact, and in order to prevent the detention of its said ship, filed an answer to the complaint in which it set up its sovereign capacity and objected to the jurisdiction of the said United States Court over it or over its property; that no demurrers or ex-
224 ceptions have been filed to said pleas.

Second.

That the Republic of Portugal, a sovereign State at peace and in the late war allied with the United States of America, is and was at the time of the filing of the within complaint and of all the proceedings hereinbefore mentioned in the aforesaid action the sole owner of the Steamship "Goa," her boats, engines, boilers, tackle, apparel and furniture. That at all of said times hereinbefore mentioned the said steamship was operated by the said government department as a maritime transport of the Republic of Portugal, and was employed in the transportation of and carriage of goods and supplies for the account and benefit of said government. That at said times said vessel was manned and officered by persons employed by said government.

Third.

That the Republic of Portugal appears before this Honorable Court for the purpose of asserting its ownership and claim to said vessel as her sole, true and bona-fide owner, and affirms that no other sovereign, person or persons are the owners thereof.

Fourth.

That at the time of the filing of the aforesaid complaint and of all of the proceedings hereinbefore mentioned against the said Transportes Maritimos do Estado and its vessels, and at and during all the times hereinbefore mentioned the Republic of Portugal was and is a sovereign foreign nation at peace with and friendly to the United States of America, and that as such the ships and vessels and property owned by the said Republic of Portugal were and
225 are by the comity of nations, not subject to suit or seizure or attachment by any person or persons in the United States of America or any of the States thereof, or to any judgment or decrees of any of the said courts.

Fifth.

That the aforesaid ship belonging to the Republic of Portugal was at all of the aforesaid times and still is under a department of the Portuguese government, entitled "Commissao dos Services dos Transportes Maritimos," generally known as Transportes Maritimos do Estado (Maritime Transports of the State), and that the said Transportes Maritimos do Estado is not a corporation, but a department of the sovereign government of the Republic of Portugal, and as such it was and is a part of said government of the Republic of Portugal and a sovereign and by the comity of nations, not subject to the jurisdiction of any of the courts of the United States of America or any of the States thereof, or to any suits or actions by any person or persons instituted in any of said courts, or to any judgments or decree of any of said courts.

Sixth.

That the sovereign government of the Republic of Portugal on the 9th day of September, 1922, by a law duly enacted by its parliament and approved by its president, and published in the government Daily Record, Series 1, No. 187, on said date, provided for and established a fund of Sixty million Escudos for the payment of all claims against said government arising out of the operation of its said steamships, and provided for the filing of such claims against it in the United States of America, and the plaintiff herein has had notice thereof and has been requested to so file his said claim, and the time has not yet expired for the filing of same and he has not filed his claim as requested.

226 Seventh.

That therefore there is no reason or necessity why, if the aforesaid claim is just, that the plaintiff above named should not be paid and receive whatever sums may be properly due and owing to him without the necessity of any violation of the comity of nations or the enforcement of any judgment or decrees of this or any other court of the United States against a foreign sovereign government at peace with this country, in conflict with all the principals of international law, and therefore said comity of nations.

Wherefore, the Republic of Portugal submits herewith that it may please this Honorable Court to order and decree that all manner of actions, summonses, writs, processes, suits or complaints heretofore issued or entered in the aforesaid United States District Court against the aforesaid Transportes Maritimos do Estado or any of its vessels or properties be quashed and dismissed; and that no other or further processes, judgments or decrees issue against it or its said vessel; and that this Honorable Court do grant such other orders, judgments and decrees as may be necessary and proper in the premises; and for all general and equitable relief. Alte, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Portugal. (Seal.)

Subscribed to before me this 9th day of December, 1922. C. Elliott Cropley, Notary Public, District of Columbia. (Seal.)

227 District of Columbia,
United States of America, ss:

Before me, the undersigned authority, on this day personally appeared His Excellency, Jose d'Alte, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Portugal, who deposes and says as follows:

That deponent is the Envoy Extraordinary and Minister Plenipotentiary of the Republic of Portugal, duly authorized and accredited to the United States of America as such, and as such is authorized to make this affidavit for and on behalf of the Republic of Portugal,

to appear before the United States District Court for the Southern District of New York and to represent said Republic of Portugal in the actions mentioned in the foregoing suggestion, and all the facts and allegations to any and everything above set forth are true and correct. Alte. (Seal.)

Subscribed before me this 9th day of December, 1922. C. Elmore Cropley, Notary Public, District of Columbia. (Seal.)

228 To the Honorable the Judges of the United States District Court for the Southern District of New York:

And now comes the Republic of Portugal, through His Excellency Visconde d'Alte, its Envoy Extraordinary and Plenipotentiary Minister, to the United States of America, and suggests to and informs this Honorable Court and gives it to understand that in the above entitled action it is sought to render amenable to suit by individuals the soverign State of the Republic of Portugal through the Transportes Maritimos do Estado, a department of the Republic of Portugal, and on further suggesting and informing this Honorable Court that it is against the general sense and general practice of mankind to implead a Sovereign State in a Court of a foreign friendly State without its consent.

Wherefore, without submitting the rights of the Republic of Portugal to the jurisdiction of this Honorable Court, but respectfully insisting that the Court has no jurisdiction of the person or property of the Republic of Portugal, he and they respectfully move that considering the suggestion filed herein by the Republic of Portugal that the above entitled action or suit and complaint therein against the said Transportes Maritimos do Estado or any of its vessels be dismissed and all further proceedings in the aforesaid action on the part of the said plaintiff be vacated and perpetually enjoined. Alte, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Portugal. (Seal.)

Subscribed to before me this 9th day of December, 1922. C. Elmore Cropley, Notary Public, District of Columbia. (Seal.)

229 DISTRICT OF COLUMBIA,
United States of America, ss:

Before me, the undersigned authority, on this day personally appeared His Excellency, Jose d'Alte, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Portugal, who deposes and says as follows:

That deponent is the Envoy Extraordinary and Minister Plenipotentiary of the Republic of Portugal, and duly authorized and accredited to the United States of America as such, and as such is authorized to make this affidavit for and on behalf of the Republic of Portugal, to appear before this Honorable Court and to represent said Republic of Portugal in the action mentioned in the foregoing Suggestion, and all the facts and allegations to any and everything above set forth are true and correct. Alte. (Seal.)

Subscribed to before me this 9th day of December, 1922. C. Elmore Cropley, Notary Public, District of Columbia. (Seal.)

230–232 United States of America,

Department of State.

No. 321.

To all to whom these presents shall come, Greeting:

I certify that Alte whose name is subscribed to the paper hereto annexed in four places, is duly accredited to this Government as Envoy Extraordinary and Minister Plenipotentiary of Portugal.

In testimony whereof, I, Charles E. Hughes, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, in the District of Columbia, this 15th day of January, 1923. Charles E. Hughes, Secretary of State. By Ben G. Davis, Chief Clerk. (Seal.)

For the contents of the annexed document the department assumes no responsibility.

233 [File endorsement omitted.]

234 OPINION.

[Filed March 12, 1923.]

United States District Court, Southern District of New York.

L. 23, P. 70.

[Title omitted.]

Henry W. Goddard, District Judge.

Silas B. Axtell, Attorney for Plaintiff.
F. Dudley Kohler, Attorney for Defendant.

I direct a verdict for the plaintiff for the sum of $435. Henry W. Goddard, U. S. D. J. March 12th, 1923.

235 MINUTE ENTRIES.

[Filed March 13, 1923.]

At a Stated Term of the District Court of the United States for the Southern District of New York Held at the United States Court Rooms, in the United States Court House and Post Office Building, in the Borough of Manhattan, City of New York, on the 19th Day of January, in the Year of Our Lord One Thousand Nine Hundred and Twenty-three.

Present: Hon. Henry W. Goddard, District Judge.

[Title omitted.]

Silas B. Axtell, Attorney for Plaintiff.
Frank M. Patterson, Attorney for Defendant.

Counsel both sides stipulated to try the case by a jury of one.

At the close of the testimony each side moved for the direction of a verdict.

Thereafter, on Monday, March 12, 1923, by direction of the court, verdict for the plaintiff for $435.

An extract from the minutes. Alex Gilchrist, Jr., Clerk.

236 United States District Court, Southern District of New York.

[Title omitted.]

JUDGMENT.

[Filed March 13, 1923.]

The issues of this action having been duly brought on for trial and tried before the Honorable Henry W. Goddard, District Judge, and jury of one, at a Stated Term of this Court held in and for the southern District of New York at the Post Office building in the City of New York, in said District, on the 19th day of January, 1923, and a verdict for the plaintiff having been duly rendered on the direction from the Court on the 12th day of March, 1923, assessing plaintiff's damages in the sum of Four hundred and thirty five ($435.00) Dollars.

Now, on motion of Silas B. Axtell, attorney for the plaintiff, it is

Adjudged that this plaintiff recover of said defendant the sum of Four hundred and thirty-five ($435.00) Dollars, found by said jury, and that said plaintiff have execution against the defendant therefor.

237 & 238 Judgment signed this 13th day of March, 1923. Alexander Gilchrist, Jr., Clerk.

239 [File endorsement omitted.]

Notice of entry of the within judgment and notice of the taxation of costs is hereby waived this 13th day of March, 1923. F. Dudley Kohler, Attorney for Defendant.

240 United States District Court, Southern District of New York.

[Title omitted.]

PETITION FOR WRIT OF ERROR AND ORDER OF ALLOWANCE.

[Filed Mar. 16, 1923.]

His Excellency, Visconde d'Alte, representative of the Government of the Republic of Portugal, its Envoy Extraordinary and Plenipotentiary Minister to the United States of America, appearing for the purpose of claiming immunity from the jurisdiction of this Court, over the Transportes Maritimos do Estado, and of the Steamship "Goa," said government conceiving itself aggrieved by the final judgment and decree entered herein on the 15th day of March, 1923, whereby the Transportes Maritimos do Estado and its property were declared not immune from the process of this Court, does hereby appeal from said final judgment and decree to the Supreme Court of the United States for the reasons specified in said assignment of errors, and it prays that this, its appeal, may be allowed and that the question of the jurisdiction of the above entitled District Court to entertain jurisdiction over the said Transportes Maritimos do Estado and its steamship "Goa" and the said government, the owner of said steamship "Goa," and to award the judgment and relief therein sought, be certified to the Supreme Court of the United States, and that a transcript of the record and proceedings and papers upon which the said final judgment and decree was made, duly authenticated, may be sent to the Supreme Court of the
241 United States.

Dated, New York, March 13th, 1923. F. Dudley Kohler, Attorney for Defendant, Office & Post Office Address 25 Broadway, Borough of Manhattan, New York City.

And now, to wit: on March 15th, 1923, it is ordered that a writ of error be allowed as prayed for. Henry W. Goddard, U. S. D. J.

242 United States District Court, Southern District of New York.

[Title omitted.]

CERTIFICATE AS TO JURISDICTIONAL QUESTION.

I, Henry W. Goddard, Judge of the United States District Court for the Southern District of New York, do hereby certify that a judgment was filed herein by the plaintiff Sylvio A. Almeida, against the Transportes Maritimos do Estado, and the Transportes Maritimos do Estado appeared herein by counsel retained by the Consul General of Portugal and filed an answer herein in which it claimed, asserted and set up as a complete defense, its immunity to the jurisdiction of the United States District Court on the ground that it was part of the sovereign government of the Republic of Portugal; and the immunity

of itself and its property to the jurisdiction of said court on the ground that its said steamship was owned and operated by said sovereign government of the Republic of Portugal on its business, and the action was brought on for trial before me and tried and proof was offered by the defendant which supported the defenses alleged in its answer, and at said trial the defendant offered an information, suggestion and petition of the Minister Plenipotentiary of the Republic of Portugal to the United States of America, excepting to the jurisdiction of this court, and I ruled out said defenses on the ground that the defendant had waived its right to so object
243 because of having appeared generally by counsel retained by its Consul General, following the decision of the "Sao Vicente," 281 Fed. 111, and I gave judgment for the plaintiff for the amount stipulated by counsel, and so decided for the reasons set forth in said opinion, to wit, that by answering generally, the defendant, Transportes Maritimos do Estado had waived any right of immunity which it possessed.

I do certify that I ruled out the defenses in said answer and the affidavits offered by the defendant in support thereof and directed the entry of said judgment and final decree because I deemed that the United States District Court for the Southern District of New York, sitting as a Court of Common Law, had jurisdiction under the circumstances herein as hereinbefore set forth, of the Transportes Maritimos do Estado, the defendant herein and its property, and to direct the judgment and final decree herein against the said Transportes Maritimos do Estado, although it has been proven to be a department of the sovereign government of the Republic of Portugal, and that its ships were engaged on the business of said government. Copies of the complaint, the answer, the information, suggestion and petition of the Minister Plenipotentiary of the Republic of Portugal, the testimony taken by commission in the Republic of Portugal, and testimony taken de bene esse in behalf of the plaintiff and the judgment and decree of the District Judge are hereto attached and made a part of this certificate. This certificate is made in conformity with Section 238 of the Act entitled "An Act to Modify, Reverse and Amend the Laws relating to Judiciary," approved March 3rd, 1911, Chapter 231, and as amended.

Dated, New York, March 15th, 1923. Henry W. Goddard, U. S. D. J.

244 United States District Court, Southern District of New York.

[Title omitted.]

CITATION.

UNITED STATES OF AMERICA, *ss:*

To Sylvio A. Almeida, plaintiff; to Silas B. Axtell, Esq., attorney appearing for the plaintiff:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, on

the 2nd day of April, 1923, pursuant to an appeal filed in the office of the Clerk of the District Court of the United States for the Southern District of New York, wherein Transportes Maritimos do Estado, is defendant, to show cause, if there by any, why the judgment and final decree so appealed from should not be corrected and reversed and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry W. Goddard, United States District Judge for the Southern Dist. of N. Y., this 15th day of March, in the year of our Lord, One thousand nine hundred and twenty-three, and of the independence of the United States, 147th. Henry W. Goddard, U. S. D. J.

245 United States District Court, Southern District of New York.

[Title omitted.]

ASSIGNMENT OF ERRORS.

His Excellency, Visconde d'Alte, representative of the Government of the Republic of Portugal, its Envoy Extraordinary and Plenipotentiary Minister to the United States of America, appearing specially for the purpose of claiming immunity from the jurisdiction of this Court over the steamship "Goa" of the Portugese government, and for no other purpose, hereby assigns error in the findings, decisions, judgments, decrees and orders of the United States District Court herein as follows:

1. In that it held that the answer of the defendant herein did not state facts sufficient to institute a defense to the allegations in the complaint herein.

2. In that it held that by appearing in this action and answering the complaint, this defendant had waived its claim to immunity to the process of this Court arising out of its Sovereignty.

3. In that it held that by appearing in this action and answering the complaint, this defendant had waived any claim that this Court did not have jurisdiction herein over this defendant as a Sovereign Power, or over its property and steamship "Goa," as being
246 owned and operated by it as that Sovereign.

4. In that it failed to hold that the defendant as a Sovereign Power or a department of a sovereign government was immune to the process of this Court and that it did not waive any of its rights to suit immunity for itself or its property or any of its rights of sovereignty by its appearing herein by its Consul General or answering the complaint or by any other act.

5. In that it failed to hold that this defendant could properly assert its rights to sovereignty and immunity for itself and its property, to the jurisdiction of this Court at any time during the pendency of this action.

6. In that it failed to hold that because the defendant was represented to be a department of the government of the Republic of Portugal, this Court should not and could not take jurisdiction.

7. In that the Court by directing the entry of the judgment herein deprived this defendant of its defense of Sovereignty.

8. In that it directed the entry of a final judgment herein in favor of the plaintiff.

9. In that it failed to hold that the defense of sovereignty was a jurisdictional defense which could be asserted at any time and was not waived by a general appearance herein by defendant's Consul General.

10. In that it deprived the defendant of its defense of sovereignty herein.

247 11. In that the Court failed to dismiss the complaint in the above entitled action against the defendant, on the petition, suggestion and information of its Minister Plenipotentiary, and failed to direct that the plaintiff in the above entitled action file its claim with the liquidating commission of the Transportes Maritimos do Estado for payment of all claims against the Government of Portugal, in accordance with the law creating said commission.

12. In that the Court held that the said steamship "Goa" is not immune from its process and jurisdiction.

13. In that the Court held that a general appearance by counsel appearing for the Consul General of the Republic of Portugal was a waiver of immunity from the jurisdiction of this United States Court over the property and the steamships of said Government of Portugal.

F. Dudley Kohler, Attorney for Defendant, Office & Post Office Address 25 Broadway, Borough of Manhattan, New York City.

248 United States District Court, Southern District of New York.

[Title omitted.]

NOTICE.

SIRS:

Please take notice That the within is a copy of a petition and order, certificate and citation, which will be presented to Honorable Henry W. Goddard, United States District Judge at Chambers, in the Woolworth Building, 233 Broadway, New York, at five P. M., on the 15th day of March, 1923.

Dated, New York, March 13, 1923. Yours, etc., F. Dudley Kohler, Attorney for Defendant, Office & Post Office Address 25 Broadway, Borough of Manhattan, New York City.

To Silas B. Axtell, Esq., 9 State Street, New York City.

To Alexander Gilchrist, Esq., Clerk of U. S. District Court, Southern District of New York.

249 [File endorsement omitted.]

250 WRIT OF ERROR.

[Filed Nov. 16, 1923.]

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the District Court of the United States for the Southern District of New York, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the District Court, before you, or some of you, between Sylvio A. Almeida, Plaintiff, and Transportes Maritimos do Estado a manifest error hath happened, to the great damage of the said Transportes Maritimos do Estado as is said and appears by its complaint. We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, Do Command You, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Judges of the United States Supreme Court at the City of Washington, D. C., together with this writ, so that you have the same at the said place, before the Judges aforesaid, on the first Monday of April, 1923, that the record and proceedings aforesaid being inspected, the said Judges of the United States Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable William H. Taft, Chief Justice of the United States, this 15th day of March, in the year of our Lord one thousand nine hundred and twenty-three and of the Independence of the United States the one hundred and forty-seventh. Alex Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, in the Second Circuit. (L. S.)

The foregoing writ is hereby allowed. Henry W. Goddard, U. S. District Judge.

[File endorsement omitted.]

251 United States District Court, Southern District of New York.

L. 23, P. 70.

[Title omitted.]

STIPULATION AS TO BOND.

[Filed March 21, 1923.]

It is hereby stipulated and agreed by and between the attorneys for the parties hereto that the plaintiff-appellant need not file a bond as security for costs on appeal in this case.

Dated, New York, March 20, 1923. S. B. Axtell, Attorney for Plaintiff. F. Dudley Kohler, Attorney for Defendant.

252 United States District Court, Southern District of New York.

[Title omitted.]

STIPULATION AS TO TRANSCRIPT.

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated March 27th, 1923. Silas B. Axtell, Attorney for Plaintiff. F. Dudley Kohler, Attorney for Defendant.

[File endorsement omitted.]

253 UNITED STATES OF AMERICA,
Southern District of New York, ss:

[Title omitted.]

CLERK'S CERTIFICATE.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 28th day of March in the year of our Lord one thousand nine hundred and twenty-three and of the Independence of the said United States the one hundred and forty-seventh. Alex. Gilchrist, Jr., Clerk. [Seal of the District Court of the United States, Southern District of N. Y.]

[Endorsed:] Transcript of Record on Writ of Error from U. S. Supreme Court.

Endorsement on cover: File No. 29,500. S. New York D. C. U. S. Term No. 950. Transportes Maritimos do Estado, plaintiff in error, vs. Sylvio A. Almeida. Filed March 31st, 1923. File No. 29,500.

MAR 10 1
WM. R. STAN

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923.

No. 265

TRANSPORTES MARITIMOS DO ESTADO,
Plaintiff-in-Error,

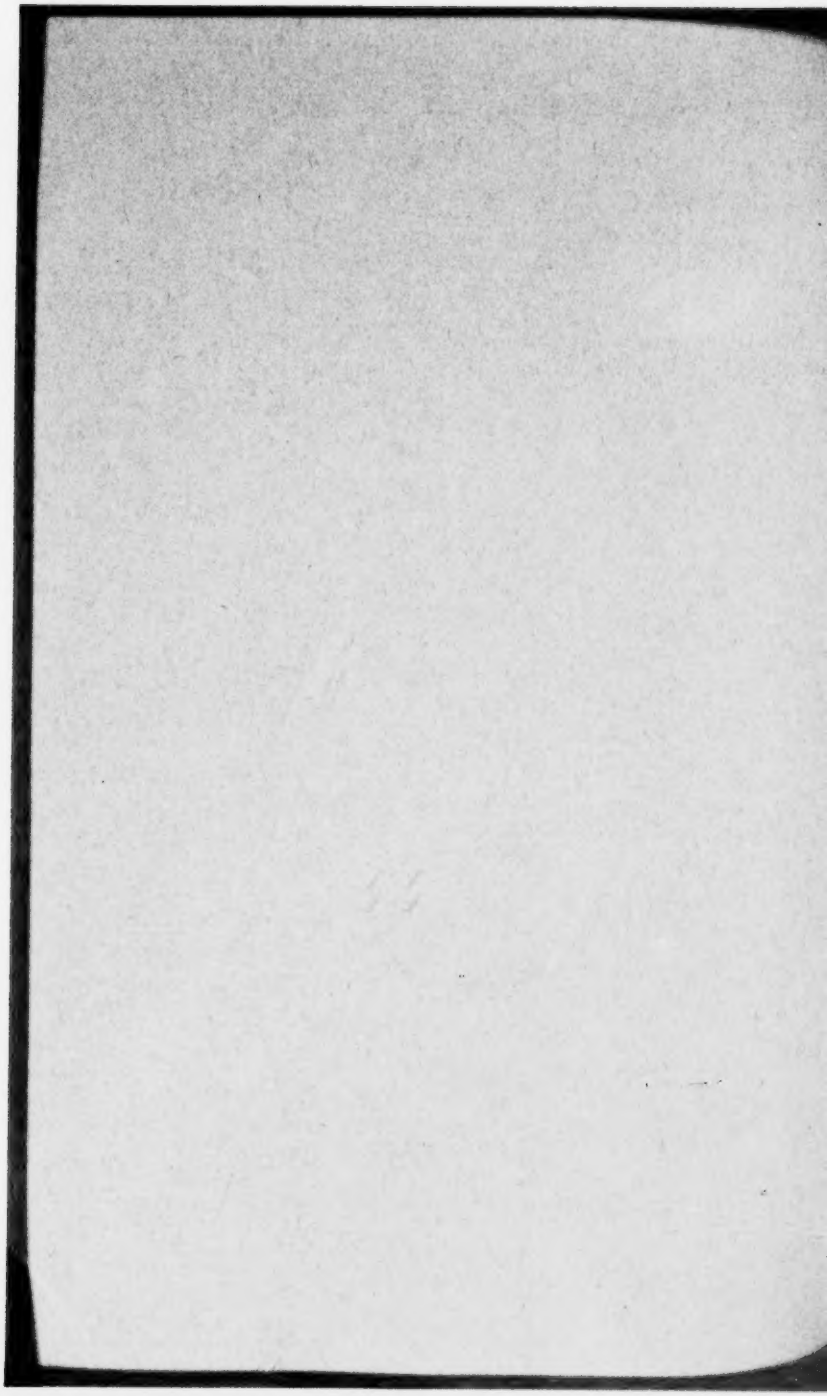
against

SYLVIO A. ALMEIDA,
Defendant-in-Error.

BRIEF FOR THE PLAINTIFF-IN-ERROR.

F. DUDLEY KOHLER,
Attorney for Plaintiff-in-Error,
No. 25 Broadway,
New York City.

LODER PRINTING COMPANY INC., NEW YORK



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Supreme Court of the United States

TRANSPORTES MARITIMOS DO ESTADO, Plaintiff-in-Error,		
AGAINST		No. 265.
SYLVIO A. ALMEIDA, Defendant-in-Error.		

Statement.

This is an action brought by the plaintiff below, a Brazilian sailor on the vessels of the Transportes Maritimos do Estado to collect a balance of wages for services rendered to said Transportes Maritimos do Estado, a department and integral part of the Sovereign Government of Portugal, between the 28th day of January, 1920, when he shipped on the Steamship *Goa* at New York for a voyage to Portugal and return on the 28th day of July, 1920, when he arrived again at New York on the Steamship *Cunene*. The contract was for work, labor and services as a sailor during said period, on the steamships owned and operated by the Transportes Maritimos do Estado. It was a contract made by an alien with an alien foreign sovereign government wholly to be performed on the ships of that government.

The plaintiff below signed Articles on January 28th, 1920, before the Acting Consul General of

Portugal in New York City to ship as a seaman on the Steamship *Goa*, for $75 a month and board. He received his wages on arrival of the *Goa* in Portugal and in addition an allowance for maintenance for a period of about two months in Portugal. At the end of this period he returned to New York on the Steamship *Cunene*, which was also owned and operated by the defendant, below. On arrival in New York the plaintiff below demanded payment of the balance of his wages from the Acting Consul General of the defendant government below. It was offered to him at the then rate of Exchange of Portuguese money and refused and he then brought this suit for $485, the amount named in the complaint.

The Summons and Complaint were served on the 28th day of September, 1920. The defendant below appeared generally and on the 19th day of November, 1920, an answer verified by the Acting Consul General of Portugal, was served, wherein it set up the defense of its sovereignty and objected to the jurisdiction of the Court on the ground of immunity from such jurisdiction because it was a part and a department of the foreign Sovereign Government of the Republic of Portugal, at peace with the United States and allied with the United States in the World War, and that to sustain a suit against it would be contrary to international comity and the treaty between Portugal and the United States, and also objected to such jurisdiction over the person and property of the defendant below without its consent.

Thereafter and on or about the 10th day of March, 1923, the defendant by its Minister Pleni-

potentiary and Envoy Extraordinary, duly accredited to this government filed in the office of the Clerk of the United States District Court for the Southern District of New York, a suggestion setting forth the sovereignty of the defendant below, and its immunity from the jurisdiction of that Court on the ground of said sovereignty.

The issue as to the sovereignty of the said defendant was referred to a Special Commissioner. In his report he failed to decide this question, but instead left it to the Court to decide. Upon the trial the only question being that of jurisdiction, both sides agreed to lay the case before a jury of one, and at the close of the trial Judge Henry W. Goddard, directed a verdict in favor of the plaintiff below for $435 (Record, p. 209). Judgment was entered accordingly (Record, p. 210) and from this judgment appeal was taken in due form directly to this Court by the defendant below upon this question of jurisdiction, which is the only issue on this appeal, and duly certified to this Court for determination (Record, pp. 211, 212, 213).

POINT I.

The defendant below is a sovereign and owned and operated the vessels mentioned in this suit for public sovereign purposes.

1. In a similar case brought by the attorney for the plaintiff below in the instant case, a commission was issued by order of the United States District Court for the Southern District of New York to take testimony of officials of the Government of Portugal in order to support the

affirmative defenses of the defendant below that it is a department of said government and not a private corporation as is alleged in the complaint. This commission was issued and a return made and the commission and the return with exhibits, have been printed and bound and have been accepted in evidence as this defendant-appellant's 'Exhibit A," on consent of counsel for both sides in this case.

That the Transportes Maritimos do Estado is actually a part of the sovereign government of Portugal and therefore itself sovereign, that its steamships are owned, operated and manned directly by said government, and were used as transportes of said government and on government business and carried government goods and supplies, is amply adduced upon the evidence obtained by the commission and accepted herein as said defendant-appellant's "Exhibit A," contained in pages 24 to 29, 82 to 92, and 152 to 156, all inclusive and in the suggestion of the Minister accepted in evidence as defendant-appellant's "Exhibit B."

In answer to the direct interrogatories Alvaro A. N. Ribeiro, the Director General of the defendant below testifies as follows:

> Third question (p. 18, Record, p. 40), "What, if any, office do you hold under the Portuguese Government?" Answer, (p. 24, Record, p. 46), "Director of Transportes Maritimos do Estado under the Portuguese Government." Seventh question, (p. 19, Record, p. 40) "Is Transportes Maritimos do Estado a department of the Government of Portugal? If so affix certified copies of all documents showing this fact." Answer, (p. 25, Record, p. 47) "Yes, it is a depart-

ment of the Government of Portugal." Text of government decree No. 5564 annexed, Enclosure "A" (Record, pp. 47 and 104). Eighth question, (p. 19, Record, p. 41) "When was Transportes Maritimos do Estado created? If by public decree affix copy of same." Answer, (p. 25, Record, p. 47), "On February 24, 1916." Text of Government Decree No. 2236 Annexed, Enclosure "B" (Record, p. 174).

Ninth question (p. 19, Record, p. 41), "By whom is Transportes Maritimos do Estado controlled?" Answer, (p. 26, Record, p. 48), "Directly by Minister of Commerce of Portugal." Sixth cross-question, (p. 22, Record, p. 44), "Are the shares of stock of the respondent herein sold, traded or assigned, and what is their par value and what is their present market value?" Answer, (p. 28, Record, p. 50), "There are no shares of stock." Seventh cross-question, (p. 22, Record, p. 44), "How many stockholders are there if you know, and how many directors and officers are there, and their names and positions?" Answer, (p. 29, Record, p. 51), There are no stockholders. I am the only director and there are no other officers."

That the vessels were owned, operated and manned directly by said Government, the Director General upon said commission testified as follows:

Sixth question (p. 18, Record, p. 40), "what is the Transportes Maritimos do Estado?" Answer, (p. 25, Record, p. 47), "It is intended for the operation of all steamers seized from several German companies during the war, and considered as good prize of war by the Naval Court."

Twelfth question, (p. 19, Record, p. 41), "When and under what circumstances were the ships acquired?" Answer, (p. 26, Rec-

ord, p. 48), "They were German steamers interned in Portugal ports during the war and were requisitioned under terms of Decree No. 2236 of February 24, 1916."

Nineteenth question (p. 19, Record, p. 41), "What provision is made by the Government of Portugal for the presentation and determination of sailors' claims for wages? Answer fully and affix copies of any documents supporting the answer." Answer, (p. 27, Record, p. 49), "The Portuguese Naval authorities in all Portuguese harbors determine and pay what wages are due."

Twentieth question (p. 20, Record, p. 42), "Are the ships operated primarily for the use and benefit of the Government?" Answer, (p. 27, Record, p. 49), "Yes."

The Minister of the Republic of Portugal states in his suggestion (Defendant's Exhibit B, Record, p. 206):

> "That the Republic of Portugal * * * is and was * * * the sole owner of the Steamship *Goa*."

And that the vessels were used for government business the Director General upon the aforesaid commission testified as follows:

> Twentieth question, (p. 20, Record, p. 20), "Are the ships operated primarily for the use and benefit of the government?" Answer, (p. 27, Record, p. 49), "Yes."

The steamship *Goa* was one of the German steamships included in the list in the Record on pages 174 and 175, which were the German ships interned in Portuguese ports as above testified by the Director General.

The Suggestion of the Minister of the defendant below also stated that the Republic of Por-

tugal appeared before this Honorable Court for the purpose of asserting its ownership and claim to said vessel as her sole, true and *bona fide* owner, and affirms that no other sovereign, person or persons are the owners thereof (Defendants Exhibit "B," Record, p. 206, paragraph "Third") and that the said steamship was operated by the said government department as a maritime transport of the Republic of Portugal, and was employed in the transportation of and carriage of goods and supplies for the account and benefit of said government. That at said times said vessel was manned and officered by persons employed by said government. (Defendant's Exhibit "B," Record, p. 206, Paragraph "Second."

2. Thus it will be evident that the Transportes Maritimos do Estado is an integral part of the Sovereign Government of Portugal and therefore is itself sovereign just as the British Admiralty is an integral part of the government of the United Kingdom of Great Britain and Ireland as held in the *Adriatic*, 258 Fed. 902, and the steamship *Goa* was and is public sovereign property of said sovereign.

POINT II.

The Transportes Maritimos Do Estado being an integral part of the sovereign government of Portugal is immune from suits in the United States Courts and this immunity was not in any manner waived herein by the said sovereign.

I.—The sovereign character of the plaintiff-in-error we have we believe fully shown above in Point I. Being sovereign it was therefore immune from the jurisdiction of the United States

Courts, as it is well settled that a sovereign cannot be sued in the United States Courts without its consent. (*Beers* v. *Arkansas*, 20 How., 527; *The Siren*, 7 Wall., 152, 154; *The Maipo*, 259 Fed., 367). The immunity of a foreign or national sovereign is in no way analogous to that of a domestic sovereign such as a State of the United States and does not rest upon the same principles. While a sovereign voluntarily may submit to the jurisdiction of its own courts, neither the state nor the federal government does or should impose the jurisdiction of its courts upon a foreign sovereign, as by so doing it transgresses the dignity of the foreign sovereign. It is universally recognized by the comity of nations that a foreign sovereign and its property are immune from the jurisdiction of our courts (*The Exchange*, 7 Cranch., 116, 11 U. S., 116; *The Carlo Poma*, 259 Fed., 369; *Briggs* v. *The Light Ships*, 11 Allen, Mass., 157; *The Fidelity*, 9 Ben., 333; *The Maipo*, 252 Fed., 627; *The Roserie*, 254 Fed., 154; *Mason* v. *Intercolonial Ry.*, 197 Mass., 349; *The Davis*, 10 Wall., 15; *Long* v. *The Tampico*, 16 Fed., 491; *The Attualita*, 238 Fed., 909; *The Luigi*, 230 Fed., 493; *The Othello*, 5 Blatchford, 342; *The Florence H.*, 248 Fed., 1012; *Workman* v. *The Mayor of New York*, 179 U. S., 552).

The most recent opinions on this subject are the United States of America, owner of the Steamship *Western Maid* v. *The Hon. J. Whitaker Thompson*, 257 U. S., 419, and *Oliver American Trading Co.* v. *The United States of Mexico*, 70 N. Y. *Law Journal* No. 15 (U. S. Dist. Ct., So. Dist. of N. Y.) p. 209. Mr. Justice Holmes, in

delivering the opinion of the United States Supreme Court in *Kawananakoa* v. *Polyblank* (205 U. S. 349, 353) said:

> "Some doubts have been expressed as to the source of immunity of a sovereign power from suit without its permission, but the answer has been public property since before the days of Hobbes, (*Leviathan*, c. 26, 2). A sovereign is exempt from suit."

II.—This sovereign plaintiff-in-error, did not waive its objection to the jurisdiction of the District Court.

There was certainly no express waiver of such jurisdiction.

1. In this case the answer protested against the jurisdiction of the Court and set up distinctly the plea of immunity. A voluntary appearance and answer waives objection to jurisdiction only in cases where the Court would acquire jurisdiction of the person if the process had been properly executed within its jurisdiction. If, however, the person sued is immune from suit so that the Court could not so acquire jurisdiction of his person by such process as in this case, a general appearance and answer in which there is a protest against the exercise of jurisdiction and a plea of lack of jurisdiction does not waive this defense. The plea here is not alone to the jurisdiction of the person but to the subject-matter of the action. Although this action is apparently to recover sailors wages, of which subject matter the Court would ordinarily have jurisdiction, it is really for services rendered to a foreign sovereign, of which the Court cannot have jurisdiction without the consent of

the sovereign. In such a case an appearance and answer cannot confer jurisdiction, for it is well settled that the question of jurisdiction can be raised at any time by the parties or by the Court itself. (*DeSimone* v. *Transportes Maritimos do Estado*, 200 N. Y. App. Div., 82; *Bradbury* v. *Waukegan & W. Mining & Smelting Co.*, 113 Ill. App., 600; *Persons* v. *Standard Life & Accident Ins. Co.*, 92 Fed., 1022; *Chicago Union Traction Co.* v. *City of Chicago*, 70 N. E., 659; *Loomis* v. *Wadhams*, 74 Mass., 557; *Evansville Grain Co.* v. *Machler*, 88 Mo. App., 186; *Butterick* v. *Richardson*, 64 Pac., 390, 39 Ore., 246; *Lewisburg Bridge Co.* v. *Union Co.*, 323 Pa., 255; *Reid* v. *Reid*, 72 Misc. (N. Y.) 214; *Rigney* v. *Rigney*, 127 N. Y., 408; *Wheelock* v. *Lee*, 74 N. Y. 495; *State of Rhode Island* v. *State of Massachusetts*, 12 Peters, 657; *Carr* v. *United States*, 98 U. S., 432; *Dickerhoff* v. *Adler*, 12 Misc., 445; *Meyer* v. *American Locomotive Co.*, 201 N. Y., 163; *Landers* v. *Staten Island R. R. Co.*, 53 N. Y., 450.)

2. It is also perfectly proper to raise this question of jurisdiction by an answer to the libel, and a denial of the allegations in the answer or pleading other defenses does not affect the question or constitute a waiver. (*Rhode Island* v. *Massachusetts*, 12 Peters, 657; *Knight* v. *Bucer*, 6 Ohio Dec., 28; *Hulbert* v. *Palmer*, 39 Neb., 158; *Christian* v. *Williams*, 35 Mo. App., 297; *The Luigi*, 230 Fed., 493; *Kingdom of Roumania* v. *Guaranty Trust Co.*, 250 Fed., 341; *Porto Rico* v. *Rosaly*, 227 U. S., 270; *Porto Rico* v. *Ramos*, 232 U. S., 627.)

In *Rhode Island* v. *Massachusetts*, 12 Peters, 657, the Court said at page 720:

> "When the objection goes to the power of the Court over the parties or the subject-matter, the defendant need not, for he cannot give the plaintiff a better writ or bill. Where no inferior court can have jurisdiction of a case in law or equity the ground of the objection is not taken by plea in abatement as an exception of the given case from the otherwise general jurisdiction of the Court; appearance does not cure the defect of judicial power and it may be relied on by plea, answer, demurrer or at the trial or hearing unless it goes to the manner of bringing the defendant into court."

Therefore, this appellant could properly rely upon its answer and the defense of immunity and objection to jurisdiction which they contained. In fact, it is a universally recognized principle that a foreign sovereign is entirely and completely immune from the process or jurisdiction of our courts. This includes judgments as well as other processes. It follows, therefore, that this objection can be first raised at any time including upon the appeal before this court.

3. The filing of a bond and stipulation moreover, cannot be regarded as a waiver of objection to jurisdiction. The filing of a claim of owner and stipulation in this case certainly would have no more effect as a waiver than a filing of an appearance or answer. No officer or agent of the sovereign can by any act waive sovereign immunity to suit without the specific legislative authority of the sovereign, accompanied by its express consent to submit to the jurisdiction of

the Court, and as this authority and consent were wholly lacking in this case, the filing of a claim and stipulation could not operate as a waiver. In *The United States of America, owner of the Steamship Western Maid, petitioner*, 257 U. S., 419, decided in the United States Supreme Court, January 3, 1922 the United States, by its attorney, duly made claim for said steamship in the District Court and caused to be filed of record a stipulation executed by the United States Shipping Board Emergency Fleet Corporation, for the payment of any award made under the final decree of the Court in said proceedings and this Court subsequently made absolute a writ of prohibition to prevent the District Court from exercising jurisdiction.

The case of *The Luigi* (230 Fed., 493) which has been cited in support of this theory of waiver, does not at all support this contention. In that case the vessel was a privately owned vessel, held under requisition or charter by the sovereign, and *the private owner* filed a claim of owner and bond. The Court allowed the attachment to stand not on the ground of waiver of objection to jurisdiction by the sovereign, but only on the ground that the private owner had intervened and that therefore the rights of the sovereign could no longer be affected.

In the very recent case in the United States District Court for the Southern District of New York, *The Oliver American Trading Co., Inc.*, v. *The Government of the United States of Mexico*, decided October 11, 1923, (New York *Law Journal*, Vol. 70, No. 15, page 209), where there was a general appearance of the defendant, the Court sustaining the sovereign immunity of the

Republic of Mexico upon a motion to dismiss on the ground of that immunity, said:

> "The only remaining obstacle in granting the relief asked by the defendants is the contention that jurisdiction has been acquired through a general appearance herein upon the part of their attorneys. Without detailing the reservations made by such attorneys * * * their clear intendment, when fairly construed, is that the appearance was special and designed to raise the question of immunity presented by their motions. Even upon the questions of appearance the court is more concerned with substance than with form." (Italics ours.)

So in this case in appearing and answering, it is certainly shown by its answer that the clear intendment of the proctors for this appellant was to raise this question of its immunity from the jurisdicton of these courts.

The Portuguese government objected to the jurisdiction of the court in its answer, and not only did not at any time in any way waive its objection, but repeatedly reiterated that objection, and in fact filed a suggestion in proper form by its minister accompanied by a certification by the Secretary of State of the United States, that he was the duly accredited diplomatic representative of this government, as in *The Ragday* (279 Fed. 130). This suggestion emphatically repudiated any waiver of objection to jurisdiction by the Portuguese Government and directly averred that the appearance and bond given by its consul or counsel or any other person on its behalf in this action was unauthorized. It also expressly stated that no authorized consent to submit to the jurisdiction of the courts

of the United States had been given by his government and, as it had the right to do under *Beers* v. *Arkansas* (20 How. 527) expressly withdrew any consent which might be inferred to have been implied.

There have in fact been no decisions which have held that by appearing and answering in an action in which an effort was made to bring a sovereign into court orginally as a party, the sovereign waived its immunity. The law has been consistently against such a theory of waiver by a sovereign (*Kingdom of Roumania* v. *Guaranty Trust Co.*, 250 Fed., 341; *The Luigi*, 230 Fed., 493; *Porto Rico* v. *Ramos*, 232 U. S., 627; *Porto Rico* v. *Rosaly*, 227 U. S., 270; *Kawananakoa* v. *Polyblank*, 205 U. S., 349; *Smith* v. *Reeves*, 178 U. S., 436; *Richardson* v. *Fajardo Sugar Co.*, 241 U. S., 44; *Gunter* v. *Atlantic Coast Line R. R. Co.*, 200 U. S., 273; *Clark* v. *Barnard*, 108 U. S., 436). In the *Kingdom of Roumania* v. *Guaranty Trust Co.* (*supra*), it was held that even by directly invoking the jurisdiction of the Court, the sovereign did not waive its immunity to the extent of subjecting itself to an affirmative judgment. The Court there said:

> "It is the long accepted law that a foreign sovereign cannot be sued nor his property attached in the courts of a foreign friendly country without its consent. Nor can the defendant when sued by a foreign sovereign avail himself of any counterclaim or set-off arising out of the same transaction. Under no circumstances can he obtain an affirmative judgment."

If this be the law it surely cannot be successfully claimed that by pleading to a complaint

against it and directly asserting and claiming its immunity therein the sovereign waived its immunity, and "it is an established principle of jurisprudence in all civilized nations that the sovereign cannot be sued in its own courts, or in any other, without its consent and permission" (*Beers* v. *Arkansas*, 20 How., 527). In *Smith* v. *Reeves*, 178 U. S. 436, Justice Harlen said:

> "The suability of a state without its consent is a thing unknown to the law. This has been so often laid down and acknowledged by courts that it is hardly necessary to be formally asserted. It may be accepted as a point of departure unquestioned."

III—There can be no implied waiver by a sovereign.

1. The sovereign's submission to the jurisdiction of our courts must be by its own express consent, by the act of its Legislature or by an equivalent sovereign act of the government itself. (*Carr* v. *United States*, 98 U. S., 432; *People of the State of New York* v. *Dennison*, 84 N. Y., 272; *Valarino* v. *Thompson*, 7 N. Y., 576; *Hassard* v. *Mexico*, 46 A. D. 623; 29 Misc., 511; *United States* v. *Eckford's Exrs.*, 6 Wall 484; *The Exchange*, 7 Cranch., 116, 117; *The Siren*, 7 Wall., 152, 154; *Stanley* v. *Schwalby*, 147 U. S., 508; *Republic of France* v. *Pittsburg Steel Export Co., etc.*, 112 Misc., (N. Y.) 688; *Dollar Savings Bank* v. *United States*, 19 Wall., 227, 239). It must be conceded from the answer that this consent is lacking in this case, that there was no such sovereign act of consent, and there is in this case no evidence of any such consent.

The case of *United States* v. *New York and Oriental S. S. Co., Limited* (216 Fed. 61, 63),

holds that the sovereign, in this case the United States, cannot be sued without its consent and that its consent to be sued must be evidenced by an Act of Congress, and cites *Stanley* v. *Schwalby* (162 U. S. 255), and further it holds that government officers cannot waive the government's privilege in this respect and that their consent that such a suit should be brought cannot bind the Government of the United States (*Carr* v. *United States* 98 U. S., 432).

2. There can be no estoppel of a sovereign to set up its immunity or objection to the jurisdiction of our courts not only for the reasons above stated, but also because even whenever the sovereign does consent to submit to jurisdiction it is its right inherent in its sovereignty to withdraw its consent. (*Valarino* v. *Thompson*, 7 N. Y., 576; *United States* v. *Lee*, 106 U. S., 196; *Stanley* v. *Schwalby*, 147 U. S., 508; *DeSimone* v. *Transportes Maritimos do Estado*, *supra*, *Beers* v. *Arkansas*, 61 U. S., 527; *South & North America Alabama R. R. Co.* v. *Alabama*, 101 U. S., 832.)

3. The District Court assumed jurisdiction apparently upon the theory that by appearing and answering the libel in this case the claimant had waived its objection to the jurisdiction of the court. This theory is untenable.

In the *Western Maid*, 257 U. S., 419, there was a general appearance by the government and nevertheless the writ of prohibition was made absolute.

POINT III.

The question of the jurisdiction of the Court upon the ground of sovereignty can be raised at any time.

1. In an action such as this to recover for services rendered to a foreign sovereign in its own ships, the court cannot have jurisdiction without the consent of the sovereign and an appearance and answer cannot confer jurisdiction, for in such cases it is well settled that the question of jurisdiction can be raised at any time by the parties or the court itself. (*De Simone* v. *Transportes Maritimos do Estado*, 200 N. Y. App. Div., 82, February, 1922 (Appendix B, *infra*, page 33), *Bradbury* v. *Waukegan & W. Mining & Smelting Co.*, 113 Ill. App., 600; *Persons* v. *Standard Life & Accident Ins. Co.*, 92 Fed., 1022; *Chicago Union Traction Co.* v. *City of Chicago*, 70 N. E., 659; *Loomis* v. *Wadhams*, 74 Mass., 557; *Evansville Grain Co.* v. *Machler*, 88 Mo. App., 186; *Butterick* v. *Richardson*, 64 Pac. 390, 39 Ore., 246; *Lewisburg Bridge Co.* v. *Union Co.*, 232 Pa., 255; *Reid* v. *Reid*, 72 Misc. (N. Y.) 214; *Rigney* v. *Rigney*, 127 N. Y, 408; *Wheelock* v. *Lee*, 74 N. Y., 495; *State of Rhode Island* v. *State of Massachusetts*, 12 Peters, 657; *Carr* v. *United States*, 98 U. S., 432; *Dickerhoff* v. *Adler*, 12 Misc., 445; *Meyer* v. *American Locomotive Co.*, 201 N. Y., 163; *Landers* v. *Staten Island R. R. Co.*, 53 N. Y. 450.)

2. It has, in fact, been held that if the Courts of the United States should exercise such jurisdiction without the consent of the foreign sov-

ereign it would amount to a declaration of war. (*The Exchange*, 11 U. S., 116; *The Maipo*, 259 Fed., 367, 368; *The Luigi*, 230 Fed., 493, 496; *The Constitution*, 4 P. D., 39, 4 Aspin, 79; *The Parlement Belge*, 5 P. D., 197, 4 Aspin., 234.) In England this doctrine of the complete immunity of a foreign sovereign and its vessels, and other property and funds has been uniformly upheld. (*The Parlement Belge*, L. R., 5 P. D., 197; *The Constitution*, Lr. R., 4 P. D., 39; *The Prins Frederick*, 2 Dod., 451; *The Jassy* (1906), P., 270; *The Gagara* (1919), P., 95; *The Scotia* (1903), A. C., 501; *The Porto Alexandre* (1920), P., 30; *The Broadmayne* (1916), P., 64; *The Messicano*, 32 Times L. R., 519; *The Crimdon*, 35 Times Law R. 81; *The Eolo* (1918), Ir., 78; *Varasseur v. Krupp*, L. R., 9 Ch. D., 351; *DeHaber v. Queen of Portugal*, 17 Ad. & El. (N. S.), 171, 202; *Wadsworth v. Queen of Spain*, 17 Ad. & El. (N. S.), 171. 215.) Rights or claims such as alleged in the cases at bar are not the subject of jurisdiction of our courts but should be adjusted by negotiations through diplomatic channels between the governments concerned. They are "*not justiciable but diplomatic.*" (*The Carlo Poma*, 259 Fed., 369; *The Maipo*, 252 Fed., 627; 259 Fed., 367; *The Parlement Belge*, L. R. 5 P. D., 197; *The Porto Alexandre* (1920), P., 30.)

3. Since the defendant below is a foreign sovereign the Court can take judicial notice of these facts of its sovereignty and the lack of jurisdiction of our Courts over it, without the filing of a suggestion by the sovereign, and of its own motion, this Court can refuse to entertain or per-

mit jurisdiction over this sovereign or its property. (*Mansfield, etc., R. Co.* v. *Swan*, 111 U. S., 379, 382; *King Iron Bridge, Etc., Co.* v. *Otoe County*, 120 U. S., 225; *Cameron* v. *Hodges*, 127 U. S. 322, 326; *Metcalf* v. *Watertown*, 128 U. S., 586, 587; *Continental National Bank* v. *Buford*, 191 U. S., 129; *Great Southern Fire Proof Hotel Co.* v. *Jones*, 177 U. S., 449, 453; *Louisville, etc., R. Co.* v. *Motley*, 211 U. S., 149; *Caperon* v. *Van Norden*, 2 Cranch, 126; *Jackson* v. *Ashton*, 8 Peters, 148; *Dred Scott Case*, 19 How., 398, 400; *Bors* v. *Preston*, 111 U. S., 252; *Williams* v. *Nottawe*, 104 U. S., 209; *United States* v. *Huckabee*, 16 Wall 414.)

The case of *De Simone* v. *Transportes Maritimos do Estado*, 200 N. Y. App. Div. 82, as it contains a very able and carefully considered discussion of the facts in this case is printed at the end of this brief as Annex A.

POINT IV.

The proper method to raise this question of jurisdiction is by a suggestion of the minister of the sovereign such as has been filed herein.

1. The suggestion to an admiralty Court that the person sought to be sued is a foreign government or the property sought to be attached is the property of a foreign government, may properly be made by a duly accredited minister or representative of the foreign government at any time. (*The Maipo*, 252 Fed., 627; *The Adriatic*, 258 Fed., 902; *The Ragday*, 279 Fed. 130; *The Roseric*, 254 Fed., 154.)

(a) In *The Maipo, supra*, the Court said:

> "While, in many instances, the suggestion that a ship is the property and in the possession of a foreign government would be made to the Court by the appropriate official or department or our government, I fail to find any support for the proposition that such course is necessary. *In re Baiz*, 135 U. S. 403, 10 Sup. Ct. 854, 34 L. Ed. 222. *It is enough that the fact is presented to the Court, as here, by the duly accredited official of the foreign government.*"

(b) In *The Adriatic, supra* (E. D. Pa.), Haight, *J.*, said very decidedly in point with the case at bar:

> "H. Baars Co., a corporation of Delaware, filed in the court below a libel *in rem* against the British Steamship *Adriatic*, and a libel *in personam* against the owners, W. H. Corkerline & Co., a British concern, to recover damages which it claimed to have sustained by reason of an alleged breach of a charter party that had been entered into, on September 28, 1916, between the owners of the steamship and the Export Terminal & Shipping Company and which had been assigned to the latter by the libellants prior to the alleged breach. * * * On November 8, 1915, while the vessel was on the high seas, the Transport Division of the British Admiralty notified the owners in England, by telegram, which was confirmed by letter sent to them the following day, that the ship had been requisitioned for government service. Instructions * * * were also cabled to the British Consul General at Philadelphia. Before the case came on for trial, but *long after the vessel had been released from arrest under bond given by the owners*, a suggestion was filed by Counsel for the British Embassy,

appearing as *amici curiæ*, to the effect * * * that the steamship, * * * had been 'duly requisitioned by the British Admiralty, which is an integral part of the Government of the United Kingdom of Great Britain and Ireland,' and that the requisition was a 'governmental action by the government of Great Britain, and should not be inquired into by, the court in which the case was pending,' * * * The learned judge of the Court below, feeling that under the circumstances he should decline to adjudicate any claim of right advanced by the libellants' which grew out of the requisitioning of the vessel by the British government, dismissed the libels. Thereupon the libellants appealed. In addition to the beforementioned suggestion filed in the Court below, there has been filed in this Court, under the hand of the British Ambassador and the seal of the British Embassy, a certificate wherein are set forth the same facts as were set forth in the suggestion, and an express avowal again made that the requisition of the steamship was a 'governmental act by the government of Great Britain and Ireland.' On principles of international comity, we feel bound to accept the suggestion and avowal of the British Ambassador *as conclusively establishing both the fact of the requisition and its governmental character.* Such has been the practice, as to similar facts, of the English courts. (*The Parlement Belge*, L. R. 5 P. D. 197; *The Constitution*, L. R. 4 P. D. 39), and quite generally of the Courts of this country. See *The Maipo* (D. C. S. D. N. Y.) 252 Fed. 627; *Agency of Can. Car & F. Co.* v. *American Can Co.* (D. C. S. D. N. Y.) 253 Fed. 152; *The Roseric* (D. C. N. J.) 254 Fed. 154, *where the suggesstions were made directly by counsel for an embassy* * * * In accordance with the rule that 'the courts of one

independent government will not sit in judgment on the validity of the acts of another done within its own territory, it is not within the province of a court of this country to attempt to determine whether the requisition of the vessel was valid or invalid under the laws of Great Britain. It must be here accepted as legal, or, as it is sometimes expressed, such a question is not justiciable. *Ricaud* v. *American Metal Co.*, 246 U. S. 304, 309, 38 Sup. Ct. 312, 62 L. Ed. 733; *Underhill* v. *Hernandez*, 168 U. S. 250, 253, 18 Sup. Ct. 83, 42 L. Ed. 456; *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, 357, 29 Sup. Ct. 511, 53 L. Ed. 826, 16 Am. Cas. 1047; *Oetjen* v. *Central Leather Co.*, 245 U. S. 297, 303, 38 Sup. Ct. 309, 62 L. Ed. 726; *The Invincible*, 2 Call. 29 Fed. Cas. No. 7,054; *Hewitt* v. *Speyer*, 250 Fed. 367, 162 C. C. A. 437 (C. C. A. 2nd Cr.); *Earn Line S. S. Co.* v. *Sutherland S. S. Co.* (D. C. S. D. N. Y.) 254 Fed. 126. Hence it follows that, * * * no cause of action accrued to them from the failure of the vessel to perform the charter, *so far as the courts of this country are at liberty to determine.* This conclusion has rendered it unnecessary for us to consider or decide any of the other questions which have been raised."

(c) In *The Ragday*, *supra*, the Court said:

"This is an application to release from seizure and attachment in admiralty the above named vessel interposed by and in behalf of the Russian government, through its consular office at the port of San Francisco, by a suggestion, in proper form, setting forth that the attached vessel was at the time of seizure the property of the Russian government *and engaged in its public service*, and that such seizure and detention is an interference with and detrimental to that service.

The application is accompanied by the *certificate of the Secretary of State, certifying to the existing recognition by the President and the State Department of Mr. Boris Bakhmetoff as the duly accredited diplomatic representative of Russia* to the United States at Washington, and a certificate from the latter that Mr. George Romanovsky the party presenting the suggestion, is entitled to recognition as the acting Russian Consul at San Francisco and authorized to represent the Russian Government in the matter pending before the Court. These facts bring the case fully within the principles of *The Roseric* (D. C.) 254 Fed. 154, and the cases therein cited; and under the principles there announced, and in the later case of *The Adriatic*, 258 Fed. 902, 169 C. C. A. 662, the Court is not at liberty to ignore the suggestion of the Russian government, for the release of the vessel."

2. It will be noted that the suggestion of the Minister of Portugal in this case bears the proper certification by the Secretary of State of the United States.

3. The suggestion could not have been presented to the court in this case by an official of the American Government as is stated to be the proper practice in the cases of *Ex Parte Muir*, 254 U. S. 522; *The Pesaro*, 255 U. S. 216; *Ex Parte Hussein Lutfi Bey*, 256 U. S. 616; for the very practical reason that the American State Department refuses to accept such suggestions from foreign diplomatic officers in litigation involving merchant vessels, assuming we think not quite properly to determine itself whether the

vessel is or is not a merchant vessel and whether or not the foreign government is entitled to immunity. This question is one for the Court and not for the State Department.

(*Author's Note*)—Suggestions were presented to the State Department in this and other cases by the Minister of Portugal in person and refused by the Department with the same statement that the practice of accepting suggestions of this nature had been entirely discontinued.

Thereafter the undersigned went to the State Department and explained to the attorneys in charge, the rulings of this court in said cases and requested the States Department to follow this practice and accept the suggestion from the Minister but the request was again refused with the explanation that the State Department does not follow this practice.

The practice, then, as laid down by this Honorable Court in the said cases is impossible of performance, and if this ruling is to stand, it makes it impossible for a friendly sovereign power to ask or obtain immunity from the jurisdiction of the American courts in any case, and by comity or retaliation no immunity for American Government vessels or property from jurisdiction from courts of friendly foreign governments.

POINT V.

This Court is without jurisdiction of the Cause of Action herein.

I.—That the Court is without jurisdiction herein because of the sovereignty of the plaintiff-in-error and that its immunity can be raised at any time we believe we have sufficiently shown in Point II, *supra.*

In *Foster on Federal Practice*, Sixth Edition, Section 94, the author discussing who may be sued in the Courts of the United States, also says:

> "All persons may be made defendants, except the United States, without their consent, or a territory thereof; *foreign states* and sovereigns for acts done in a political capacity," and cites *Duke of Brunswick* v. *King of Hanover*, 6 Beav., and *Hullet* v. *King of Spain*, 2 Bligh, N. R. 30.

Further this same author says in Section 102a.

> "A District Court of the United States has no jurisdiction *in personam* against a foreign state or sovereign," citing *Kingdom of Roumania* v. *Guaranty Trust Co.*, 250 Fed. 341.

II.—This Court is without jurisdiction as the action is brought by an alien against a foreign government or it is an action between aliens.

1. If the court finds that this defendant below is a sovereign then the courts of the United States should not entertain jurisdiction over a foreign sovereign without its consent and the complaint should be dismissed.

2. If on the other hand the defendant below were merely a Portuguese corporation it is an action between aliens, and there is no reason why admiralty should retain jurisdiction of this case between aliens, and a Federal Court of law has no jurisdiction of a suit between aliens where no federal question is involved. (*The Cunard S. S. Co.* v. *Smith*, 255 Fed. 846; *The Kaiser Wilhelm III*, 230 Fed. 717; *The Carolina*, 14 Fed. 424; *Goldman* v. *Furness Withy & Co.*, 101 Fed. 467; *Montalet* v. *Murray* (1807) 4 Cranch 46, 2 U. S. L. Ed. 545; *Hodgson* v. *Bowerbank*, (1809) 5 Cranch 303, 3 U. S. L. Ed. 108; *Jackson* v. *Twentyman* (1829) 2 Pet. 136, 7 U. S. (L. Ed.) 374; *Prentiss* v. *Brennan* (1851) 2 Blatchf. 162, 19 Fed. Cas. No. 11,385; *Rateau* v. *Bernard* (1854) 3 Blatchf. 244, 20 Fed. Cas. No. 11,579; *Hinckley* v. *Byrne* (1867) Deady 224, 12 Fed. Cas. No. 6,510; *Lacroix* v. *Lyons* (E. D. La. 1886), 27 Fed. 403; *Johnson* v. *Accident Ins. Co. of North America* (W. D. Mich. 1888) 35 Fed. 374; *Laird* v. *Indemnity Mut. Marine Assur. Co.* (S. D. N. Y. 1890) 44 Fed. 712; *Pooley* v. *Luco* (S. D. Cal. 1896) 72 Fed. 561; *Gage* v. *Riverside Trust Co.* (S. D. Cal. 1906) 156 Fed. 1002; *Petrocokino* v. *Stuart* (1879) 14 Phila. (Pa.) 412, 37 Leg Int. (Pa.) 30, 19 Fed. Cas. No. 11,041.)

In *Cunard S. S. Co.* v. *Smith, supra*, where it was held that the Federal Courts, whose jurisdiction is derived from the Constitution and Acts of Congress, have no jurisdiction over an action at law where both parties are aliens, and that it cannot obtain jurisdiction in such a case by consent of the parties, the Court said:

> "The complaint discloses on its face that it is one which a federal court is without

jurisdiction to entertain. The jurisdiction of these courts is derived from the Constitution and the Acts of Congress. No jurisdiction is conferred upon the federal courts of a case in which both the parties are aliens, (*Montalet* v. *Murray*, 4 Cranch, 46, L. Ed. 545; *Mossman* v. *Higginson*, 4 Dall. 12, 1 Law. Ed. 720; *Pooley* v. *Luco* (CC) 72 Fed. 561; *Prentiss* v. *Brennan*, Fed. Cas. No. 11,385, 2 Blatchf., 162), and this complaint shows that the plaintiff and defendant are both aliens. A court of the United States cannot obtain jurisdiction to hear and decide a case by consent of the parties. *Peoples Bank* v. *Winslow*, 192 U. S. 256, 26 L. Ed. 101; *Byers* v. *McAuley*, 149 U. S. 608, 13 Sup. Ct. 906, 37 L. Ed. 867. It was the duty of the District Judge to have dismissed the complaint on its own initiative, even though the defendant did not call the matter to his attention. *Judicial Code* (Act March 3, 1911, c 241) Par. 37, 36 Stat. 1098 (Comp. St. Par. 1019), provides as follows: 'If in any suit commenced in a District, or removed from a state Court to a district court of the United States, it shall appear to the satsifaction of the District Court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said District Court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this chapter, the said District Court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just.' But, this was not done by the court below, it must be done by this court."

3. It will be evident from a glance at the complaint that no federal question is involved under Article III, Section 2 of the Constitution to give jurisdiction. It is merely an action for seaman's wages. But although an action for seaman's wages is within admiralty jurisdiction as on an admiralty contract, there is no ground under the reasoning in *The Carolina, supra,* for this court's retaining jurisdiction of the case at bar for it is a suit brought upon a contract made by a foreign sovereign government with an alien in its own Consulate, *i. e.*, in its own territory, and to be performed on the high seas and in its own territory under its own flag, and one to which the law of the foreign country particularly applies.

4. Even if there were ground for admiralty jurisdiction of the subject matter in this case, still this Court should not retain jurisdiction, for under the principles in the *Kaiser Wilhelm III* case, *supra,* a *Brazilian* plaintiff could not maintain a suit of this kind in the courts of this country against defendant below to enforce a claim arising under Portuguese law in what is actually Portuguese territory, where neither the law of Brazil nor that of Portugal gives the plaintiff below such a right.

5. Finally although an admiralty court might have jurisdiction of a suit of this character, this action was not brought in admirality. It is an action at law on the law side of the court and therefore as a Federal Court of law has no jurisdiction in actions between aliens, the complaint herein must be dismissed.

III.—The complaint should be dismissed because the action is brought by an alien seaman against a sovereign government on a contract made and entered into and to be executed wholly within the territory or upon the ships of that foreign sovereign government.

1. Although, as stated, this contract, being one involving the question of seaman's wages may therefore be an admiralty contract and within the admiralty jurisdiction, still no reason exists in this case for the retention of jurisdiction by this Court upon that ground. The claim is now before the Portuguese Government and will be paid in due course regardless of the decision of this Court, so that no injustice to a seaman will be prevented by the court's retention of jurisdiction.

2. The contract or shipping articles, which plaintiff below signed, as alleged in the complaint, show that the plaintiff below was an alien, a native of Brazil. The defendant below is, as shown by the suggestion of the Minister Plenipotentiary and Envoy Extraordinary of the Republic of Portugal to the United States (Record, p. 205) and by the Exhibits "A" and "B" of the defendant below (Record, pages 47, 48, 50, 51, 104 and 205) a Department of the Government of the Republic of Portugal. The contract was signed by the plaintiff below in the Consulate of the Republic of Portugal, and, therefore, in the view of the law, on Portuguese territory. It was a contract to serve the defendant below not altogether in any particular vessel, but on its ships generally as directed by

the defendant below. It was to be performed wholly within the territory of the defendant below or on its ships under its flag, and it was a contract to be construed and governed by the laws of the said Sovereign Government of Portugal (Record, pages 15-19). It was a contract which our Courts could not essay to enforce or consider without violating the cardinal principle that the courts of one independent government will not sit in judgment on the validity of the acts of another done within its own territory. In such cases, and especially whenever objection is made, as has been done in this case by the diplomatic representative of the foreign government, it is an established principle of law and comity that the courts of the United States will not entertain jurisdiction of controversies between an alien and a foreign sovereign or between alien citizens of such a foreign government. (*Wulfsohn* v. *Russian Soviet Government*, 195 N. Y. 472; *Goldman* v. *Furness Withy & Co.*, 101 Fed. 467; *The Carolina*, 14 Fed. 424; *Macon* v. *International Railway*, 83 N. E., 876, 197 Mass. 349, 16 L. R. A., (N. S.) 276; *The Adriatic*, 258 Fed. 902; *The Roseric*, 254 Fed. 154.)

(a) In *Macon* v. *International Railway*, *supra*, it was held that an action brought in a court of the State for personal injuries sustained in Canada by the operation of the Intercolonial Railway of Canada will be dismissed for want of jurisdiction where the railway is the property of the King of England and not a corporation and is operated through his government of Canada for the public purposes of Canada, since the suit was against a foreign

sovereign. In the case at bar the suit is for wages claimed to have been earned on a ship of the Portuguese Government, owned and operated by the Portuguese Government for its own sovereign uses and public purposes. It is practically the same as would be a suit by a naval officer against his government for wages for services rendered on one of its war vessels. It is a suit by an alien against a foreign sovereign.

(b) In *Goldman* v. *Furness Withy & Co., supra*, where even a court of admiralty *in the exercise of its discretion* had refused to entertain jurisdiction of a suit between foreigners for the breach of a contract of carriage made in Canada, no part of which was to be performed within the United States, and it appeared that the controversy could more properly be determined by the courts of Canada, by the laws of which the contract was governed, it was held that the court of admiralty was not required to entertain a second suit on the same cause of action by an assignee of the former libellant, who was a citizen and resident of the district where the suit was brought, when the assignment was merely colorable, and made for the purpose of enabling the suit to be brought in such court; and the court said:

> "Upon a former libel filed February 15, 1900, by Sally Wertheim, as libellant, against the present defendant, and upon a special appearance of the defendant and affidavits showing that both parties were non-resident; that the contract was in fact made between the agents of the parties in person in Mon-

> treal; that no part of the contract was to be executed within the United States; that it has been partly performed; that it was governed by the law of Canada, and that nearly, if not quite all, of the witnesses were there, and that the convenience of parties would be greatly subserved by the trial of the cause in Canada, rather than within this jurisdiction, it was held that the court should not exercise its discretionary power to enforce a trial of the cause here, but should remit the parties to the more appropriate forum of Canada. * * *
>
> Here the circumstances are all different. Every circumstance opposes the trial of the cause within this jurisdiction and makes that of Canada more appropriate, except apparently the choice of the German Company and its agent, the present libellant. This court is *overburdened with causes which must be tried within this jurisdiction;* and it ought not voluntarily to entertain jurisdiction of other causes which on all grounds are more appropriately triable elsewhere, to the neglect and prejudice of its own proper and necessary business."

These words are most aptly in point with the case at bar. This contract was wholly to be performed under the Portuguese flag. It had been partly performed. It was governed by the law of Portugal. Nearly, if not quite all of the witnesses were within the jurisdiction of a Portuguese tribunal. The convenience of the parties would therefore be considered by the trial of the cause in Portugal. The jurisdiction of Portuguese Courts would be more appropriate. Moreover this action is not one in admiralty but at *common law* and therefore this court has no discretion in a case of this kind, but not only should

decline to entertain jurisdiction for all the reasons given in the case last above cited it but should decline as a Court of common law to entertain jurisdiction in this case and remit the cause to the courts of Portugal for disposition.

(c) In *Wulfsohn* v. *The Russian Soviet Republic, supra*, it was laid down that every sovereign state is bound to respect the sovereignty of every other sovereign state, and that the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. This principle appears with force in the case at bar. If this sovereign defendant below did not pay this plaintiff below as he demanded it must have had some reason which to itself seemed good and sufficient for its refusal and the courts of the United States should not sit in judgment on this act of this sister sovereign government of the Republic of Portugal.

(d) In *The Carolina, supra*, where it was held that the admiralty courts of the United States cannot be required to allow themselves to entertain jurisdiction of a case where a subject of a foreign government invokes their action against a merchant vessel of that foreign government, the Court declining to entertain jurisdiction said:

> "This is an action brought to recover damages for assault and battery, alleged to have been committed on the high seas. * * * The British Consul resident at this port, having been notified, came before me and, in behalf

of his government, remonstrated against this court taking cognizance of the cause * * * The only ground upon which a foreigner could urge a claim to become a libellant in our courts would be that it was by comity due his government that its subjects should be thus heard, and, so far as this claim could be considered as a right, it could be insisted on only by that government, and, except in cases of inhumanity or gross injustice, would disappear whenever the claimant's government took a position against it. * * *

It is a suit brought by a foreigner springing out of a voyage on the ship of a friendly nation on account of alleged grievances. The representative of that Country asks this Court not to interfere. * * *

In this case I am satisfied, by reason and abundant authority, that the court should decline to entertain jurisdiction. *Gienar* v. *Meyer*, 2 H. Bl. 603; *The Golubchick*, 1 W. Rob. 143; *Gonzales* v. *Minor*, 2 Wall. Jr., 348; *The Becahrdass Ambaidass*, 1 Low. 569; *The Maggie Hammon*, 9 Wall. 435; *One Hundred and Ninety-four Shawls*, Abb. Adm. 317; *Gardner* v. *Thomas*, 14 Johns, 134; *Johnston* v. *Dalton*, 1 Gow. 543; and the very able articles on 'suits between aliens in the courts of the United States,' (7 *Amer. Law. Rev.* 417) from which a reference to many of the above cases was derived."

Here the suit was dismissed although the action was only *against a merchant vessel of the foreign government*, while in our case the action is against the government itself.

The right of the plaintiff below herein to bring an action of this kind in our federal courts could only be considered as a right by consent or upon request of his government. If that government

was Brazil it has made no such request by consul or otherwise. If the government of the plaintiff below was Portugal, it has objected to such jurisdiction by its Minister.

This is a suit, as in *The Carolina, supra,* brought in our courts by a foreigner springing out of a voyage on the ships of a friendly nation, on account of alleged grievances and the representative of that country has asked this court not to interfere.

3. In *The Carolina, supra,* the case last cited the Court dismissed the libel because the foreign government represented by its Consul objected to the jurisdiction of the Court. In our case at bar the Portuguese Government repeatedly insisted upon its objection and filed a suggestion by its Minister.

4. From the cases hereinbefore cited and quoted it is clear that it is contrary to the principles of comity of nations and the policy of this United States Government to permit the citizens and subjects of a foreign government to sue their own or another foreign government or another alien in the courts of the United States upon a claim or contract arising within the territory or jurisdiction of that foreign government or to be performed in the territory or within the jurisdiction of that foreign government as in the case at bar, and certainly so is it contrary to said principle and policy to permit such a suit to be brought in a court of the United States which could not be brought in the courts of the foreign government. This suit could not have been maintained by this plaintiff below in a

Portuguese Court, as there it would be known to be a suit against that government. This plaintiff below could not attach property of or sue the government of Portugal in Portugal, so it was necessary, if he were to sue at all, that the suit be brought against that government in the said District Court under the guise of the defendant below being a corporation. Under the above principles of law our courts should decline to entertain jurisdiction.

IV.—The suggestion of the Minister of Portugal also sets up the Treaty between the United States and the Republic of Portugal, of which this court can take judicial notice, and affirms that under the terms of this treaty this court should decline to exercise jurisdiction in this case. The pertinent provisions of this treaty are:

> (a) "Article II—Treaty of Commerce and Navigation; Vessels of the United States of America arriving either laden or in ballast, in the ports of the Kingdom and possessions of Portugal, and reciprocally, the Portuguese vessels arriving, either laden or in ballast, in the Ports of the United States of America, shall be treated, on their entrance, during their stay, and at their departure upon the same footing as national vessels."
>
> (b) The most favored nation clause.

Under these provisions of the Treaty a vessel owned and operated as a Portuguese government vessel should have been exempt in this action from attachment in this country. For since the United States Government would not permit one

of its own government owned ships to be arrested, under the Act of March 9th, 1920, its Courts should not permit a vessel owned by the Portuguese Government to be arrested here, and, if the principle enunciated in *The Carolina, supra*, and other above cited cases is to be followed in the case of the British and Russian governments and their vessels and property, it should also be observed and enforced in the favor of the Portuguese government and its property.

V.—This case is distinguishable from the cases, the rule of waiver in which was followed by the trial judge in the instant case of *Tietjen & Lang Dry Dock Company against the Steamship Sao Vicente in rem*, and against this defendant *in personam*, *Maxwell Rose against the Steamship Mormugao in rem*, and against this defendant *in personam*, and *Thomas de Simone against the Steamship Mormugao in rem*, and against this defendant *in personam*, recently pending in the United States Courts, in that in these cases the actions were brought by citizens of this country for alleged materials furnished and services rendered in this country under contracts alleged to have been made and to be performed in this country, while in this case now before this court the action is brought by an alien Brazilian or a Portuguese sailor against the Portuguese government as an alleged Portuguese Corporation, and therefore by an alien against a foreign sovereign based on a contract made in Portuguese territory as in its consulate, or within the jurisdiction of Portugal, and to be performed wholly within Portuguese

territory or jurisdiction, and in which, under the laws of Portugal, as shown by the suggestion herein of its minister, no suit could be brought or would be entertained in or by any Portuguese Court. If this practice were looked upon with favor by the Courts of other nations, then a sailor of this country, particularly in its merchant service operating ships of the United States Shipping Board, could go abroad and sue this United States Government in a foreign country in a claim against it on which it could not bring suit against the United States government in its own courts except by its own consent. As this action could not be maintained by this alien plaintiff in the Courts of Portugal against the government of Portugal, it follows, therefore, under the rules and principles of comity between nations that he should not be permitted to maintain it in the Courts of this Country.

VI.—For the above reasons it would seem clear, that, even if the cause were an action in admiralty and within the admiralty jurisdiction, this Court should dismiss this complaint and leave these alien parties to the jurisdiction of the Portuguese Court for the enforcement of this contract to which the laws of the Government of Portugal would apply. But the fact should not be overlooked that this is an action at law and not in admiralty, whereof the Court cannot entertain jurisdiction between aliens and much less between an alien and a sovereign.

POINT VI.

The question of jurisdiction is properly raised by a motion to dismiss at the trial.

1. The question of lack of jurisdiction is usually raised by a motion to dismiss as in this case. (*Metropolitan S. S. Co.* v. *Pacific-Alaska Navigation Co.*, 260 Fed. 973). This motion was made by the defendant below and it should have been granted.

2. It can be raised at any time as shown in Point II, *supra*.

3. The motion cannot be defeated by any claim of consent of the parties, for, if brought to the attention of the Court at any time that jurisdiction is lacking, or upon its own initiative, the Court should dismiss the action. Therefore the objection cannot in any manner be waived or considered by consent of the parties. *The Oceana*, 148 Fed. 131, 132. *Cunard S. S. Co.* v. *Smith*, 255 Fed. 846. In *The Oceana*, *supra*, the Court said:

> "The libellant rejoins that the claimant by appearing, filing claim, executing the usual stipulation for value, and admitting the jurisdictional averments of the libel, has waived whatever advantage these defenses might have conferred if duly pleaded. Consent, however, cannot give jurisdiction if it does not exist as to the subject matter of the suit; if the contract sued on be not maritime, jurisdiction of the subject matter is lacking; while if there be no maritime lien there is no foundation for a decree *in rem*. *The Monte A* (D. C.) 12 Fed. 333. The

claimant's methods of presenting these jurisdictional points is certainly unusual, but sufficient to require their consideration. *The John C. Sweeney* (D. C.) 55 Fed. 540."

In our case the jurisdictional averments in the complaint were not admitted but on the contrary the defense of lack of jurisdiction and objection to the jurisdiction of the Court was formally pleaded in the answer.

POINT VII.

The Complaint Herein Should Be Dismissed.

Dated, New York City, February 14, 1924.

Respectfully submitted,

F. Dudley Kohler,
Attorney for Defendant,
Office & Post Office Address,
25 Broadway,
Borough of Manhattan,
New York City.

ANNEX "A."

(Recorded 200 N. Y. App. Div. 82)

SUPREME COURT,

APPELLATE DIVISION—FIRST DEPARTMENT.

February, 1922.

Present:—Hon. JOHN PROCTOR CLARKE, *P. J.*,
" FRANK C. LAUGHLIN,
" VICTOR J. DOWLING,
" ALFRED R. PAGE,
" EDGAR S. K. MERRELL, *JJ.*

THOMAS DE SIMONE,
Respondent,

vs.

TRANSPORTES MARITIMOS DO ESTADO,
Appellant.

Motion No. 58, February 10, 1922.

Motion for a re-argument of the appeal decided January 13, 1922 (199 App. Div. 602), or in the alternative for leave to appeal to the Court of Appeals.

APPEARANCES:

MEYER KRAUSHAAR, of Counsel (Celler & Kraushaar, Attorneys), for the motion.

F. DUDLEY KOHLER, opposed.

PAGE, *J.*:

The inspiring cause of this motion is the fact that the United States Circuit Court of Appeals for the Second Circuit, in a suit in admiralty, wherein the vessels libelled were in the possession and control of the above-named defendant, had dismissed the appeal and stated that "The sovereign immunity can be waived in this case." Thereafter our decision was called to the attention of that Court, with the suggestion that our decision was not in harmony with theirs, whereupon the Circuit Court handed down an opinion more fully stating their views, and their opinion is, among other things, suggested as grounds for a re-argument of this appeal. Our great respect for the learning and ability of the United States Circuit Court of Appeals for the Circuit of which this State is a part, has caused us to give careful consideration to their opinion, especially to the reasons assigned in the final statement denominated "3." The remaining part of the opinion dealing with the facts as related to admiralty procedure have no bearing upon a decision in an action at law in a court of the State of New York.

In our former opinion we held that the defendant by serving an answer denying certain material allegations of the complaint and pleading certain separate defense, among which was a plea to the jurisdiction on the ground that the defendant was a department of the government of Portugal, an independent sovereign nation in amity with the United States Government, did not thereby waive the objection to the jurisdiction. The substance of the defense was thus stated in

our opinion: "The defendant objects to and protests against the assumption of jurisdiction by this Court, and alleges that it is a department of the sovereign government of Portugal and cannot be sued in any of the courts of the United States without its consent, and that this action is in substance and effect an action against the Government of Portugal, and as such is not maintainable against the defendant." To this defense a demurrer was interposed for insufficiency. We treated this answer as the equivalent of a voluntary general appearance and stated: "A voluntary general appearance of the defendant is equivalent to the personal service of the summons within the state (Code Civil Procedure §424) and therefore waives the objection of jurisdiction of the court in such cases as those in which the court would acquire jurisdiction of the person if such service was made within the states." We pointed out that it was impossible to obtain jurisdiction by the service of a summons upon any officer or representative of the Government of Portugal that might have been within this State.

The Circuit Court of Appeals, on the contrary, said:

> "3. Finally, if we were to pass by the questions already considered, appellant is confronted with a line of cases of ruling authority which have now clearly held that the immunity of the sovereign being susceptible of waiver is lost when the sovereign enters a litigation with a general appearance."

The cases relied on by the Court as establishing this principle are *Clark* v. *Barnard* (108 U.

S., 436, 447); *Gunther* v. *Atlantic Coast Line R. R. Co.* (200 U. S., 284, 289); *Porto Rico* v. *Ramos* (232 U. S., 627); *Richardson* v. *Fajardo Sugar Co.* (241 U. S., 44); *Veita et al* v. *Fortuna Estates* (240 Fed. R., 256, 262). In every one of these cases the question arose as to the effect of a voluntary appearance in an action in the United States Courts of either one of the states of the United States or of Porto Rico, a territory of the United States. (See *Kopel v. Brigham*, 211 U. S., 468, 476.)

A state of the Union is not an independent sovereignty, either in relation to foreign nations or to the other states of the United States. The Federal government is the sole sovereignty recognized by other governments. A state has no position in international matters except as represented by the Federal government. As between themselves the states are separate entities, but they have no power to make treaties or compacts with each other, except as authorized by the Congress of the United States. Claims cannot be enforced or wrongs redressed by levying war, but an action may be maintained against the offending state in the Supreme Court of the United States (*N. H.* v. *Louisiana*, and *N. Y.* v. *Louisiana*, 108 U. S., 76, 90). A state has been designated by Mr. Justice Holmes as a "quasi sovereign" and by Mr. Justice Harlan as "possessing some powers of sovereignty." *Georgia* v. *Tennessee Copper Co.*, 206 U. S., 230, 237, 239.)

Within its territorial limits, a state may take and enforce laws; set up courts and define their jurisdiction; maintain a militia; exercise the police powers and rights of eminent domain; levy

and collect taxes; create municipal and private corporations; and exercise generally sovereign powers. Its sovereignty ends with its state boundary lines. Its relations with other states of the Union are not governed or controlled by international law or comity, but by a private international law, usually denominated a conflict of laws, regulated and controlled by the constitution and laws of the United States. This distinction is evident when we consider that a citizen of a state cannot sue that state in any court without its consent, because as to the citizen the state is a sovereign, but until the adoption of the eleventh amendment to the Constitution of the United States a citizen of another state could sue a state in the United States Courts (*Chisholm* v. *Georgia*, 2 Dallas, 419, 471-2) and as demonstrated by Chief Justice Jay, there was nothing derogatory to the dignity of a state in subjecting it to suit in a court of the United States.

It has been the practice of states either to erect special courts in which one of its citizens could prosecute claims against the state, or to confer jurisdiction on courts to hear and adjudicate such claims. Therefore its consent to waive the constitutional immunity from suit could be implied from its act by appearance as well as by express legislative provision.

In my opinion the right of a court of this country to assume jurisdiction over a cause of action against a foreign sovereign nation, or to seize and impound its property cannot be reasoned from analogy to the right to so treat another state. In *New Hampshire* v. *Louisiana*, and *New York* v. *Louisiana* (*supra*) it was distinctly

held that one state cannot create a controversy with another state by assuming the prosecution of debts owing by the other state to its citizens. In *United States* v. *Dickelman* (92 U. S., 520, 524) the Court said: "One nation treats with the citizens of another only through their government. A sovereign cannot be sued in his own courts without his consent. His own dignity, as well as the dignity of the nation he represents, prevents his appearance to answer a suit against him in the courts of another sovereignty, except in the performance of his obligations, by treaty or otherwise voluntarily assumed. Hence, a citizen of one nation wronged by the conduct of another nation must seek redress through his own government. His sovereign must assume the responsibility of presenting his claim, or it need not be considered. If this responsibility is assumed, the claim may be prosecuted as one nation proceeds against another, not by suit in the courts, as of right, but by diplomacy, or, if need be, by war. It rests with the sovereign against whom the demand is made to determine for himself what he will do in respect to it; he may submit to arbitration, open his own courts to suit, or consent to be tried in the courts of another nation. All depends upon himself." Alexander Hamilton wrote "It is inherent in the nature of sovereignty, not to be amenable to the suit of an individual without his consent. This is the general sense, and the general practice of all mankind" (The Federalist No. LXXXI.) The leading case in this country on the immunity of a vessel of a foreign sovereignty from seizure by the courts of the United States in a suit in ad-

mirality is *The Exchange* (7 Cranch, 116), in which the schooner *Exchange*, owned by American citizens was seized on the high seas by a French privateer, taken to France and refitted as a vessel of war. Two years after she entered an American port, and upon libel filed in the United States District Court, by her former owners, was seized by process of the court. The libel was dismissed by the District Court, the sentence of the District Court reversed by the Circuit Court and on appeal the sentence of the Circuit Court reversed and that of the District Court affirmed by the Supreme Court of the United States. Mr. Justice Marshall writing for the Court held that a public armed vessel of a foreign nation entering the port of a friendly state under the circumstances of that case is not subject to the judicial tribunals of the United States. The same principle was applied by the Court of Appeals Division of the High Court of Justice of England in the case of the Parlement Belge (L. R., 5 Prob. Div., 197 in 1880) in proceedings in rem to secure redress for loss incurred by a collision instituted against an unarmed mail packet boat belonging to the Government of Belgium, officered and commissioned by that Government and sailing between Dover and Ostend. The court held that the vessel came within the rule which extends immunity from the jurisdiction of the courts of one country to the public vessels of a foreign nation, even though incidentally carrying freight and passengers for hire. The court cited and quoted from the following cases: *The Exchange* (*supra*) *The Duke of Brunswick* v. *The King of Hanover* (6 Beav., 1,

50); *The Prins Frederick* (2 Dod., 451, 456); *De Haber* v. *The Queen of Portugal* (17 Q. B., 171); *The Athel* (1 Wm. Rob., 374); *Briggs* v. *The Lightships* (11 Allen [Mass.] 157); *The Marquis of Huntley* (3 Hagg., 246); *The Thomas A. Scott* (10 L. J., [N. S.] 726) and *Vavasseur* v. *Krupp* (L. R., 9 Ch. D., 351). The court then said: "The principle to be deduced from all these cases is that, as a consequence of the absolute independence of every sovereign authority, and of the international comity which induces every sovereign state to respect the independence and dignity of every other sovereign state, each and every one declines to exercise by means of its courts any of its territorial jurisdiction over the person of any sovereign or ambassador of any other state, or over the public property of any state which is destined to public use, or over the property of any ambassador, though such sovereign, ambassador, or property be within its territory, and, therefore, but for the common agreement, subject to its jurisdiction." The court then considered the argument that the admiralty suit was a proceeding *in rem* solely against the property, and not a procedure directly or indirectly impleading the owner of the property, and held that a court which seizes and sells a man's property assumes to make that man subject to its jurisdiction and said (page 219): "To implead an independent sovereign in such a way is to call upon him to sacrifice either his property or his independence. To place him in that position is a breach of the principle upon which his immunity from jurisdiction rests. We

think that he cannot be indirectly impleaded, any more than he could be directly impleaded. The case is, upon this consideration of it, brought within the general rule that a sovereign authority cannot be personally impleaded in any court." These decisions so far as I have been able to discover have never been questioned.

Is this immunity from suit lost by appearing generally and protesting or setting up the plea of immunity by answer? As we stated in our former opinion, a voluntary general appearance of the defendant is equivalent to the personal service of the summons within the state (Code Civ. Pro. §424) and therefore waives the objection to the jurisdiction of the Court in cases in which the court would acquire jurisdiction of the person if such service was made within the state. It follows from this that where the person served is immune from suit in our courts so that by personal service of the summons no jurisdiction could be obtained, his service of an answer in which he protests against the assumption of jurisdiction, and pleads the want of jurisdiction as a defense, does not thereby waive the defense. For the plea goes not alone to jurisdiction of the person but to the subject matter of the action as well, although the action is to recover for goods sold and delivered, of which the Court would have jurisdiction ordinarily. It is more than this, it is to recover for goods sold and delivered to a foreign sovereignty of which the court does not, and cannot have jurisdiction except with its consent. In the case of *The Parlement Belge* (*supra*), (page 220) the Court said: "It has been frequently stated that an independent sovereign

cannot be personally sued, although he carried on a private trading adventure. It has been held that an ambassador cannot be personally sued, although he has traded, and in both cases because such suit would be inconsistent with the independence and equality of the state which he represents." In one sense the defendant by pleading has submitted the question as an issue of fact to the court, and that is whether the defendant above named is a department of the government of Portugal. We did not discuss this in our former opinion, for there we were dealing with the demurrer to the defense which we overruled, thereby holding that the facts alleged, taken as true, would constitute a defense. We did not direct a dismissal of the complaint, but left the issue of fact to be tried. The plaintiff claims that he is thus put at a disadvantage, as he will have to fully develop his case before the defendant is required to put in its defense. This result does not follow. The Court at Special Term would, undoubtedly, grant an order directing the issue of jurisdiction to be separately tried, as that issue if resolved in favor of the defendant would lead to a dismissal of the action, and if decided that the defendant was not a department of the government but a corporation similar to that considered by us in *Ingersoll-Rand Co. v. U. S. Shipping Board Emergency Fleet Corporation* (195 App. Div., 838) then the action would be tried on its merits.

In *Ex parte Muir* (254 U. S., 522, 532) the Court indicated the different methods in which a foreign sovereignty could raise the question of jurisdiction. We stated in our former opinion

the methods therein set forth, among which was by appearing in the action, or presenting its claim through the State Department of the United States Government and, if it sanctioned the claim of immunity, presenting it to the court through the Attorney General. In the *Pesaro* case (255 U. S., 216) instead of following the methods prescribed in *Ex parte Muir* the Italian Ambassador suggested to the court that the ship was owned by the Italian Government and at the time of the arrest was in its possession. The libellant objected that a direct suggestion by the Ambassador was admissible and that to be entertained, the suggestion should come through the official channels of the United States. This objection was overruled and the ship released from arrest.

The Supreme Court in reversing the decree said (page 219): "The terms and form of the suggestion show that the ambassador did not intend thereby to put himself or the Italian Government in the attitude of a suitor, but only to present a respectful suggestion and invite the court to give effect to it. He called it a 'suggestion' and we think it was nothing more. In these circumstances the libellants' objection that, to be entertained, the suggestion should come through official channels of the United States was well taken, (*Ex parte Muir*, 254 U. S. 522"); and further stated that an opportunity must be given so to present and establish the matters affirmed in the suggestion in an appropriate way when the case goes back to the District Court.

In the instant case the above named defendant by its attorney answered, setting up the defense

that it was a department of the Government of Portugal. Can it be said that the defendant had consented to the jurisdiction of the court when the answer presented a protest and a defense to the jurisdiction? As the Court said in *United States* v. *Dickelman* (*supra*): "It rests with the sovereign against whom the demand is made to determine what he will do with it." In the instant case a defense to the jurisdiction of the court and a protest against its exercise was submitted to the court.

If that should prove to be the fact the court has no jurisdiction and could not disregard the protest and overrule the objection by a claim that by the municipal law of this State the defense was waived, for by the law of nations an adjudication binding the sovereign to pay the judgment could not be made nor its property taken on execution to satisfy the judgment. To hold otherwise would allow the courts of this State to endanger the peaceful relations between the United States and a friendly sovereignty and furnish the latter with a *casus belli*.

In our former opinion we cited the case of *Smith* v. *Tuttle* (14 N. Y., 465), merely for the purpose of showing the distinction between pleas in common law pleading and answers and defenses under the code pleading; that under the former pleas in abatement and in bar could not be joined, while under the latter a defendant answers but once and he may set forth as many defenses as he thinks he has, and therefore a union of defenses in an answer did not necessarily cause the abandonment of any of them. As an illustration and in harmony with this prin-

ciple we cited *Hamburger* v. *Baker* (35 Hun, 455, 457). This case was not overruled in *Reed* v. *Chilsom* (16 N. Y. Supp., 744, aff'd, 142 N. Y., 152), in which the non-resident defendant whose property had not been attached appeared by attorney who served a general notice of appearance, and some three months afterwards answers were served setting up several defenses and among them the lack of jurisdiction. In the *Hamburger* case and in the case at bar there was no notice of appearance served, but the appearance was effected by the service of an answer. A notice of appearance may be limited for the purpose of raising the question of the jurisdiction of the court and where the appearance is by demurrer or answer which raises the question of jurisdiction of the court the defendant cannot be held to waive the objection or defense expressly stated in the pleading. §488 of the Code of Civil Procedure expressly provides that "the defendant may demur to the complaint, where one or more of the following objections appear upon the face of the complaint. 1. That the Court has not jurisdiction of the person of the defendant. 2. That the Court has not jurisdiction of the subject of the action" * * * and (§498) where any matter enumerated in §488 as grounds for demurrer do not appear on the face of the complaint the objection may be taken by answer. If not taken either by demurrer or answer the defendant is deemed to have waived it except the objection to the jurisdiction of the Court. * * * (§499). If the objection in the first instance is presented in the manner prescribed by the Code, how can the defendant be deemed to

have waived it? The answer would seem to be that it has not. (*Popfinger* v. *Yutte*, 102 N. Y., 38, 42; *Hankinson* v. *Page*, 19 Abb. N. C., 274 276; Wallace, *J.*, U. S. Dist. Co., So. Dist., N. Y.; *Weidman* v. *Libby*, 16 App Div., 616, 622.)

In the instant case if the facts stated in the defense are proved then no court in the State of New York has acquired or can acquire jurisdiction of the person or the subject matter of the action over the protest of the defendant. We therefore adhere to our original decision, and the order will be modified as directed in our former opinion.

As the order does not finally determine the action, leave to appeal to the Court of Appeals is denied with $10 costs.

All Concur.

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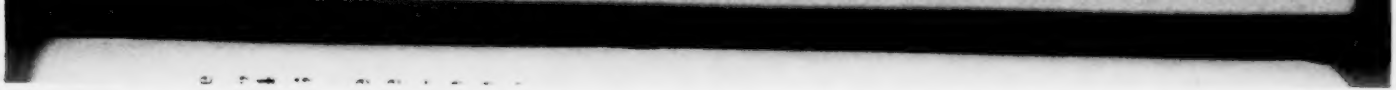
No



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IN THE

Supreme Court of the United States

No. 265.

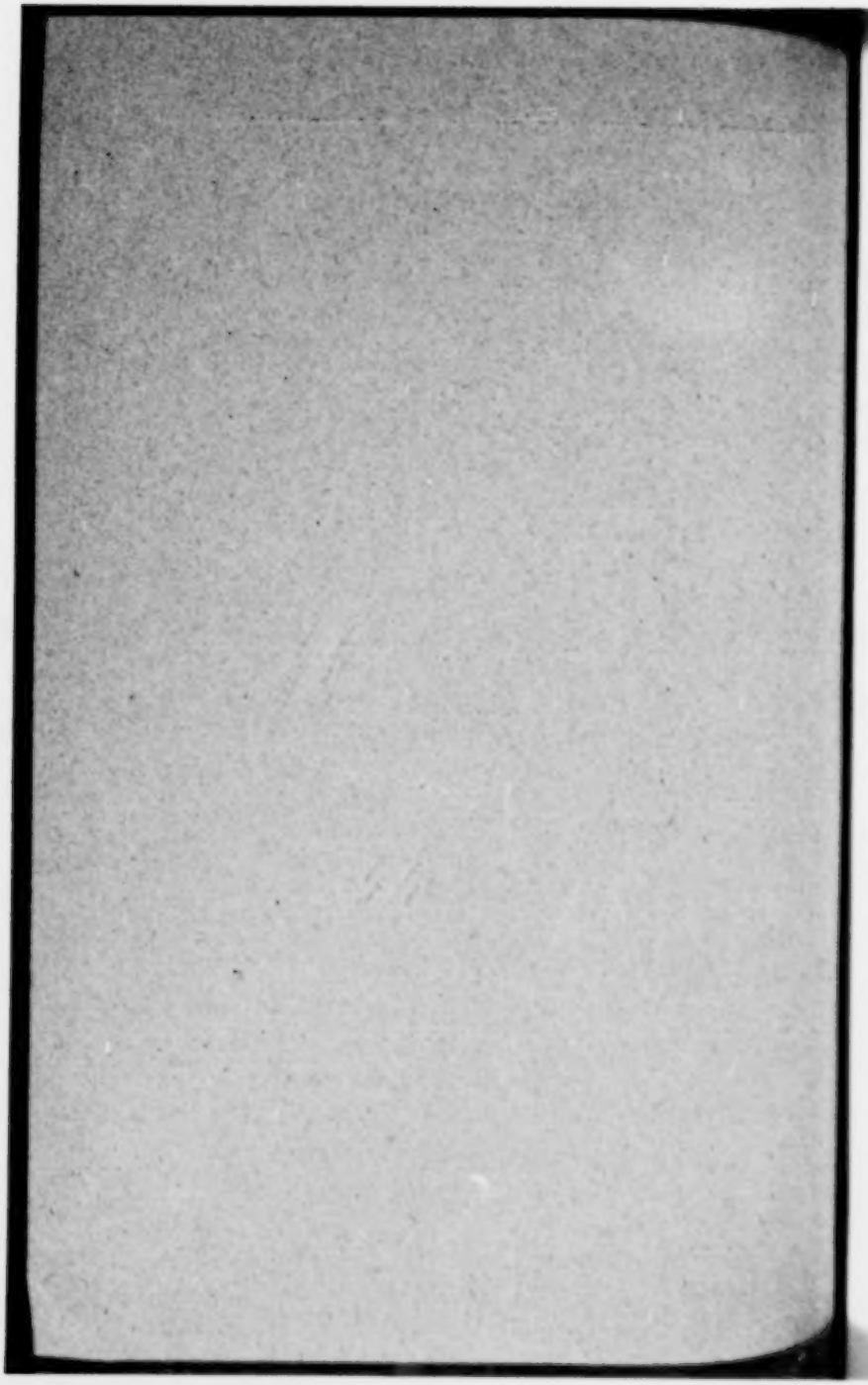
TRANSPORTES MARITIMOS DO ESTADO,
Plaintiff-in-Error,

—against—

SYLVIO A. ALMEIDA,
Defendant-in-Error.

BRIEF FOR DEFENDANT-IN-ERROR.

SILAS B. AXTELL,
Attorney for Defendant-in-Error.



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IN THE

Supreme Court of the United States

No. 265.

TRANSPORTES MARITIMOS DO ESTADO,
Plaintiff-in-Error,

—against—

SYLVIO A. ALMEIDA,
Defendant-in-Error.

BRIEF FOR DEFENDANT-IN-ERROR.

Statement.

This case is before this Court, on a writ of error to the United States District Court for the Southern District of New York, for review of a question of jurisdiction.

The action was by a seaman for wages, under the provisions of the Seamen's Act allowing such suits to be brought in the courts of the United States by foreign seamen.

The complaint alleged that the defendant below was a foreign corporation, having an office for the transaction of business in the District, and was the owner and operator of a certain merchant vessel known as the GOA; alleged the making of the contract of employment; the breach thereof; the amount due; and demanded judgment. *The defendant entered a general appearance and*

then filed an answer. In its answer defendant admitted the allegation that the GOA was a merchant vessel and owned and operated by the defendant (Record, p. 4, par. II of Answer), and pleaded to the allegations of fact in the complaint respecting the making and breach of the contract, and the accrual of the cause of action, admitting some of the allegations and denying others upon information and belief. Defendant denied, *upon information and belief*, that the defendant was a foreign corporation; and as an alleged *defense* to the cause of action, alleged affirmatively, *upon information and belief*, that defendant was a department of a foreign sovereign government at peace with the United States, and stated a conclusion that it could not be sued without its consent. The answer was verified by the acting Consul General of Portugal, and his verification contained the statement that that official *was informed and believed* that the defendant was a department of the Republic of Portugal, a sovereign foreign government. The answer was filed the 19th day of November, 1920. On the 16th day of March, 1923, after 2½ years, the Minister Plenipontentiary and Envoy Extraordinary of Portugal to the United States filed in the Court a suggestion that the defendant was a department of the Portuguese Government, and immune to suit against its will by international comity. (Precisely this entire method of procedure has been recently condemned by the United States Supreme Court and by the Circuit Court of Appeals in *The Sao Vicente*, 260 U. S. 151, 67 L. ed. 179, and 281 Fed. 111.)

On the trial the parties stipulated as to the amount due, and defendant urged only the ques-

tion of jurisdiction. The case was by stipulation tried by a jury of one, and at the close of the trial the Court directed a verdict for the plaintiff below for $435 (Record, p. 209), the amount stipulated by the parties, and judgment was entered for that amount on March 13, 1924 (Record, p. 210). This appeal was then taken.

The question of the jurisdiction of the trial Court to give judgment between the parties is the only question requiring determination by this Court.

The Nature of the Question Presented.

The question, simply stated, is whether the Court below justly or illegally exercised jurisdiction over the defendant, Transportes Maritimos do Estado. In certifying this question, the Court below said:

> "I ruled out said defenses on the ground that the defendant had waived its right to so object because of having appeared generally by counsel retained by its Consul General, following the decision of 'Sao Vicente,' 281 Fed. 111, and I gave judgment for plaintiff for the amount stipulated by counsel, and so decided for the reasons set forth in the opinion, to wit, that *by answering generally, the defendant, Transportes Maritimos do Estado had waived any right of immunity which it possessed*" (Record, p. 212).

This ruling presents clearly the main question for review. There is, however, the additional question, if any possible right to claim immunity had not been waived, whether the existence of such right in this defendant was sufficiently

shown in this case to have required the Court's renouncing jurisdiction. In opposing this appeal defendant-in-error submits that there was not in the record any competent proof sufficient to require the trial Court to hold that the defendant, Transportes Maritimos do Estado, was, in fact, a sovereign or a department of a sovereign; that the defendant, Transportes Maritimos do Estado, conclusively waived any immunity which it might have possessed; that the Government of Portugal never properly and legally presented competent objection to the exercise of jurisdiction, and said Government waived any right it might have had to claim immunity.

POINT I.

There was no competent proof of defendant's sovereign status.

The summons, with which the action was begun, was directed to the Transportes Maritimos do Estado, defendant. The complaint, served with the summons, named, in the title of the action, the Transportes Maritimos do Estado as defendant, and alleged that such defendant was a foreign corporation, and had an office for the transaction of business in the State and City of New York, and that said defendant owned and operated the merchant vessel GOA (Record, p. 2). On the complaint, therefore, the Court *prima facie* obtained jurisdiction of such defendant (*Ex parte Muir*, 254 U. S. 522).

The defendant, Transportes Maritimos do Estado, voluntarily recognized the summons,

obeyed it, and filed a general appearance. It also filed an answer, in which it admitted that, as alleged in the complaint, it "had an office for the transaction of business in the City, County and State of New York," and in other respects *denied upon information and belief* "the truth of the allegations in the paragraph marked 'First' of the complaint." Defendant admitted that *it, the Transportes Maritimos do Estado*, owned and operated the steamship GOA, and admitted that such vessel was a merchant vessel (Complaint, par. "Second," Record, p. 2; Answer, par. "II," Record, p. 4). Under paragraph "IX," subdivisions 2 and 7 of the answer, defendant, for a "separate, distinct and complete defense," *alleged on information and belief* that it was a department of a sovereign foreign government.

As a jurisdictional plea, it is clear from *The Sao Vicente*, 281 Fed. 111; *Id.*, 260 U. S. 151, 67 L. ed. 179; *The Anne*, 3 Wheat. 435, 445, 4 L. ed. 428, 430, and the cases hereinafter discussed in Point II hereof, that these allegations were neither proper, competent nor legal. But except upon the jurisdictional question, they had no place in the case.

But, even had the plea been proper as a defense, the record does not sustain appellant's confident assumption that the sovereignty of the defendant, the Transportes Maritimos do Estado, was proven.

I. In the first place, the allegations of defendant's sovereignty in the answer were not con-

clusive, nor even of a character to be respected as proof. This is not a case of an authoritative assertion by the proper foreign diplomatic representative, or our own Executive Department, that the defendant sued is a sovereign. A foreign consul general is not recognized as an official who by his mere statement can bind the Court upon the question of a defendant's sovereign status. (*The Sao Vicente*, 260 U. S. 151, 67 L. ed. 179; *The Anne*, 3 Wheat. 435, 445, 4 L. ed. 428; *The Sao Vicente*, 281 Fed. 111.)

If this defendant could be shown to have sovereign immunity, it would not be because it as an independent entity was a sovereign, but because it occupied such a relation to an independent sovereign that it could partake of that recognized sovereign's immunity. But the immunity of such recognized sovereign was a matter of international comity and courtesy between our Government and it, as a nation, and a right inuring to that foreign government as such, and to be claimed by that government, as a sovereign, through its proper diplomatic representative in negotiation with our Executive Department (*Ex parte Muir, supra*). The defendant, Transportes Maritimos do Estado, as an independent entity, has neither sovereign status nor diplomatic representation, and *prima facie* was not immune to suit. An entity may be a "department" of a government and yet not immune to suit. (*The Sao Vicente, supra.*) Hence, to obtain immunity it must rely upon the foreign government's right thereto, and must, in objecting, cause seasonable objection to jurisdiction and claim of immunity (before the defendant entity submits to jurisdiction) to be

made on behalf of such foreign government and in such foreign government's right by the properly accredited and authorized diplomatic agent of such foreign government. And in claiming immunity through such official, it must be an official, not of the subordinate entity having no independent sovereign status, but of the foreign government whose conceded sovereign status it is claimed relates to the defendant in suit. And it being necessary to show that the entity sued as defendant has such relation to the foreign government as to partake of its sovereign character, the mere representation or allegation of an official to that effect can constitute conclusive, or even proper and competent, proof of such relationship and such sovereignty, *only* when it is either: (1) the representation or allegation of the proper *diplomatic* (as distinguished from *Consular*) official of the foreign country (*The Sao Vicente*, 260 U. S. 151, 67 L. ed. 179; *The Anne*, 3 Wheat. 435, 445, 4 L. ed. 428; *The Sao Vicente*, 281 Fed. 111); which itself is competent and conclusive only if made upon special appearance and plea to the jurisdiction before defendant's submission to suit (*Ex parte Muir*, 254 U. S. 522; *The Pesaro*, 255 U. S. 216); or (2) the certificate, representation or suggestion of the American Executive Department, which alone is responsible for our diplomatic and international relations and competent to advise thereon (*Ex parte Muir, supra; The Pesaro, supra; The Carlo Poma*, 255 U. S. 219).

In addition to his lack of official capacity authoritatively to bind the Court, even by a positive and assured representation as to sover-

eignty, and his being an official whose representation the Court should, for policy's sake, refuse, even on its own motion, to accept or respect either as conclusive proof or as evidence of sovereignty (*The Sao Vicente*, *supra*; *The Anne*, *supra*), it is to be noted that, in the instant case, the Consul General was, himself, obviously in doubt as to the sovereign relationship or sovereign character of this defendant, and did not intend to bind either defendant or the Portuguese Government to such claim, or to rely thereon in suit; for, as pointed out, his allegation was upon information and belief (Record, p. 5), and in his verification thereof he stated, "I am informed and believe." And the sources of his information and grounds of his belief were stated to be records of this defendant kept at its New York office, and communications from *its* agents (Record, p. 6). Identically similar representations, allegations and verification were considered in *The Sao Vicente*, 260 U. S. 151, 67 L. ed. 179, and there held not to constitute *proof of sovereignty* such as a court should or might recognize for the purpose of granting immunity to a defendant entity (this same defendant entity) on the ground of the sovereign immunity of a foreign government with which such defendant claims a relationship.

II. In the second place, the deposition of Senhor Ribeiro, taken in the *Mattos* v. *Transportes Maritimos do Estado* case and admitted herein, does not afford such proof. This "proof," in fact, would fail of conclusiveness or merit on the question of the sovereignty of the defendant, Transportes Maritimos do Estado, for the same

reason as that of the acting Consul General, *i. e.*, it is the testimony of an official not shown to be authorized by the Portuguese Government or any sovereign entity to represent it diplomatically in foreign affairs in the assertion or establishment of its own or its subordinates' sovereign character and prerogatives. The statement of the Director of the Transportes Maritimos do Estado that such institution is a department of the Government of Portugal and shares in the sovereignty of that Government is no more proof to an American court of the possession by this defendant of such relationship and such sovereign character than is the statement of the Consul General. Such Director, even more than the Consul General, "is not considered as a minister or diplomatic agent of his sovereign, entrusted by virtue of his office, with authority to represent him in his negotiations with foreign states, or to vindicate his prerogatives." He is "an incompetent person" to prove such sovereignty either of the foreign government or its subordinate agencies and departments, in the judiciary of a foreign land (*The San Vicente*, 260 U. S. 151, 67 L. ed. 179, 182-183; *Id.* 281 Fed. 111; *The Anne*, 3 Wheat. 435, 445, 4 L. ed. 428f. Hence, the stipulation of counsel allowing such testimony to be admitted to the record for what it might prove cannot accord to it efficacy as establishing something which under no circumstances the representations, statements and testimony of such witness could prove.

At best, such deposition is but the self-serving representation of the present defendant's titular head upon a question as to which his testimony could in no event be either persuasive or even

entitled to the respect or consideration of a court. It is testimony to a fact which American courts must recognize he is utterly incapable and incompetent to prove. Recognition of a capacity and status of sovereignty in casual unknown entities cannot be given on hearsay. Indeed, it is not a function of the judiciary to determine such recognition. That is exclusively a function of our Executive Department (*Ex parte Muir*, 254 U. S. 522; *The Pesaro*, 255 U. S. 216). Where our Executive Department has recognized a foreign entity as a sovereign, the judiciary may, and, indeed, must accept such determination (*Ex parte Muir, supra; The Pesaro, supra*). And our Executive Department having recognized the Republic of Portugal as a sovereign government, the judiciary must, in treating of such Republic's rights, give recognition to its sovereign status. But where a separate foreign entity, sued in an American court as a corporation, seeks to claim the benefit of the immunity accorded by comity to a particular sovereign recognized by our Executive Department, the proof of the relationship of such entity to such recognized sovereign should be proof of the type long recognized and established in international relations (*The Sao Vicente*, 260 U. S. 151, 67 L. ed. 179; *Id.*, 281 Fed. 111; *Ex parte Muir*, 254 U. S. 522; *The Anne*, 3 Wheat. 435, 445, 4 L. ed. 428). It would be manifestly dangerous to the well ordered diplomatic relations of this country with such foreign country, as well as resultingly dangerous to the peace and friendship of such countries, for the judiciary of this country to give the benefit of the immunity, and the honor and respect properly running to such country as a peculiarly distinguished and

individual right, to any casual defendant who might choose to claim on his own behalf a relationship with and the sovereign privileges of such foreign government. Proof of such a sovereign relationship, acceptable to our courts, should be such only as accords to the actual sovereign head of the recognized foreign government the diplomatic courtesy and respect of determining for itself what shall and shall not, and does and does not constitute the bounds and parts of its sovereign self, and such as accords to our Executive Department a free hand in diplomatic affairs. The defendant sued cannot be said *prima facie* to be one of the family of nations recognized by international law and comity as sovereigns; and when it makes the assertion, in its own behalf, that it partakes of the peculiarly precious sovereignty of another recognized entity, the burden of establishing that fact, in a manner fully according to the recognized sovereign due respect of its unlimited right of self-determination, is assumed by such defendant; and under such circumstances this clearly cannot be shown by the mere testimony of such defendant's own officers or its own titular head. This Court may take notice of the fact that in diplomatic intercourse between nations, the most extended formalities are required and practiced in the accrediting by one country to another of its official agents. Yet, the manner in which it is here sought to establish the sovereign relationship of this defendant with a friendly recognized foreign country can only be paralleled by the obviously ridiculous situation of an individual's appearing before our State Department and seeking to establish, merely by his own statement, and without credentials from any proper

known official of a foreign power, that he is the envoy and ambassador of such power and entitled to all the peculiar courtesies extended to such an envoy through respect to the foreign power.

Proof of such a relationship as that here claimed by this defendant as above pointed out, can be properly made to a court in either of two ways only; *i. e.*: (1) by the representation or statement of the recognized sovereign itself properly interposed; or (2) by the certificate of our Executive Department. It is a delicate matter of foreign relations—a matter peculiarly diplomatic, as distinguished from judicial (*Ex parte Muir, supra*). If the proof is to be made by the recognized foreign sovereign on its own behalf, it must be by an agent who is "entrusted by virtue of his office, with authority to represent him [the sovereign] in his negotiations with foreign states, or to vindicate his prerogatives" (*The Sao Vicente, supra; The Anne, supra*), and who has authority officially to claim such sovereign prerogatives on its behalf as well as to attribute to such sovereign all responsibility for the exercise of this, its peculiar privilege, and for the recognition thereof by our courts. The Director of the Transportes Maritimos Do Estado, Senhor Ribeiro, is not a diplomatic official of the Portuguese Government—at least the record does not disclose that he holds credentials as such—and our State Department has not certified him as such. Consequently he could neither represent nor bind such Government in its relations with our own; his person, in our courts, cannot represent officially the person of such Government; his testimony is not, in our courts, the testimony of the Portugaese Govern-

ment. He is entirely without either authority or capacity to advise any branch of this Government, officially, concerning the internal organization of the Portuguese Government, or as to who and what is, or is not, a proper recipient for the high privileges our Government extends to the Portuguese Government.

It follows that, irrespective of stipulations or objections of counsel (which here do not, however, extend to the merit of the "proof" submitted), the mere testimony of this Director could in no event establish the fact of the sovereignty of this defendant, which by the deposition it is sought to prove. And in addition, even if such testimony could be given recognition as establishing that, in fact, the Transportes Maritimos do Estado is a "department" of the Portuguese Government (which clearly it cannot), this, nevertheless, would not, as pointed out in *The Sao Vicente*, *supra*, establish that such "department" partakes, as such, of the sovereignty of such Government, or warrant an American court in assuming that it does. Upon those points Senhor Ribeiro is simply not capable nor competent to say; and the American Judiciary should refuse to be moved by his statements, one way or the other.

III. In the third place, the suggestion by the Portuguese Ambassador herein, made $2\frac{1}{2}$ years after the general appearance and submission to jurisdiction of the defendant Transportes Maritimos do Estado, could not constitute proof of sovereignty for the purpose of this action. Such suggestion at that time had no place in the action.

It is to be noted that this mode of proof does not follow the formal requisites set forth in *Ex parte Muir*, 254 U. S. 522; *The Pesaro*, 255 U. S. 216; and *The Sao Vicente*, 260 U. S. 151; 67 L. ed. 179; since it was not made or transmitted to the Court by our Executive Department on behalf of the Ambassador; nor even made by the Ambassador himself by special appearance before submission of defendant to jurisdiction. The waiver feature is discussed hereafter: as to the defendant, in Point II hereof; as to the Portuguese Government, in Point III. But even aside from the question of the clear waiver, this manner of suggestion cannot, under the cases last cited, and under *Matter of Transportes Maritimos do Estado*, decided by the Supreme Court on February 18, 1924, be held either valid or proper proof, on the Record here presented.

In addition, the Portuguese Government had conclusively waived any right to immunity it possessed (See Point III hereinafter).

POINT II.

The Court obtained and held jurisdiction over this defendant. The Transportes Maritimos do Estado waived any immunity it might have possessed.

We believe that in Point I hereof it has been shown that it was not competently proven to the Court in this action that, in fact, the de-

fendant, Transportes Maritimos do Estado, is itself a sovereign, or partakes of the sovereignty of any known and recognized sovereign entity. But irrespective of whether the proof in the record could justify a finding that defendant, in fact, was sovereign in character, the record shows clearly that jurisdiction of the defendant was properly assumed and held, as against such defendant, the Transportes Maritimos do Estado.

While jurisdiction of the subject matter of a cause of action cannot be conferred upon a court by the consent of parties,

> "It is otherwise as to jurisdiction of the person. If a court has jurisdiction of the subject matter, a party may voluntarily submit himself to such jurisdiction, or may, by failing to object thereto at the proper time, waive his right to contest such jurisdiction."
>
> Works on Jurisdiction, p. 31;
> 12 Am. & Eng. Encyc. of Law, 299.

In the instant case, the subject matter is seaman's wages. The United States courts clearly have jurisdiction of such subject matter of a cause of action between foreign seamen and the foreign vessel owner who transacts business here or sends his vessels into American harbors. And under the Seaman's Act, the courts of the United States have been opened to foreign seamen, and have jurisdiction of foreign seamen's wage suits, as well as jurisdiction to enforce the statutory incidents thereof provided by the Seaman's Act (*Strathearn S. S. Co. v. Dillon*, 252 U. S. 348; *Patterson v. Bark Eudora*, 190

U. S. 169; U. S. Rev. Stat. Sec. 1330). The theory expounded by plaintiff-in-error, therefore, that the suit here reviewed is an attempt illegally to foster on the Court jurisdiction over foreign parties to a foreign contract is not apt. The contract was made within the United States and involved a seaman's employment on a vessel going in and out of American harbors for trade purposes; and in such circumstances, even independent of the fact that the contract must be considered primarily an American contract because made here and calling for part performance here, the seaman is entitled to the benefits of the positive provisions of the statute and the American law governing wages earned in such an employment (*Strathearn S. S. Co.* v. *Dillon*, 252 U. S. 348).

The Court clearly had jurisdiction of the subject matter, therefore, and the instant question of jurisdiction relates to jurisdiction of the person; *i. e.*, whether the Court could and did obtain and properly exercise jurisdiction of the person of the defendant, Transportes Maritimos do Estado. And in this connection it should be noted that many of the cases cited by plaintiff-in-error on the method of raising objection to jurisdiction, relate only to jurisdiction of the subject matter, which cannot be conferred by waiver or consent.

But even in a case of recognized sovereignty, the immunity from suit in foreign courts which is accorded by comity and international law to such sovereign is a mere personal privilege which may be waived (*Clark* v. *Barnard*, 108

U. S. 436, 447, 27 L. ed. 780, 784; *Smith* v. *Reeves*, 178 U. S. 436, 441; *Beers* v. *Arkansas*, 20 How. (U. S.) 527, 529; *Kawananakoa* v. *Polybank*, 205 U. S. 234; *Ex parte Muir*, 254 U. S. 522; *The Pesaro*, 255 U. S. 216; *The Carlo Poma*, 255 U. S. 219; *The Sao Vicente*, 260 U. S. 151, 67 L. ed. 179; *Id.* 281 Fed. 111; *Porto Rico* v. *Ramos*, 232 U. S. 627, 632, 58 L. ed. 763, 765; *Bank of U. S.* v. *Planters Bk.*, 9 Wheat. 904, 6 L. ed. 244; *The Anne*, 3 Wheat. 435, 445, 4 L. ed. 428, 430; *U. S.* v. *Lee*, 106 U. S. 196, 209; *Mighell* v. *Sultan of Johore* (1894), 1 Q. B. 160, 63 L. J. Q. B. N. S. 593, 9 Reports, 447, 70 L. T. N. S. 64, 58 J. P. 244).

> "The immunity from suit belonging to a state * * * is a personal privilege which it may waive at pleasure; so that in a suit, otherwise well brought, in which a state had sufficient interest to entitle it to become a party defendant, its appearance in a court of the United States would be a voluntary submission to its jurisdiction."
>
> *Clark* v. *Barnard*, 108 U. S. 436, 447; *Smith* v. *Reeves*, 178 U. S. 436, 441.
>
> "A state may, if it thinks proper, waive this privilege, and permit itself to be made a defendant in a suit by individuals or by another state."
>
> *Smith* v. *Reeves*, 178 U. S. 436, 440; *Beers* v. *Arkansas*, 20 How. 527, 529.
>
> "The territory, of course, could waive its exemption."
>
> *Kawananakoa* v. *Polybank*, 205 U. S. 349.

The distinction sought to be drawn by plaintiff-in-error between the States of the Union and foreign sovereign states in this respect is not sound. The same rule applies to foreign sovereigns, who when within our country may submit to the jurisdiction of our courts or waive their personal privilege of immunity (*The Sao Vicente*, 260 U. S. 151, 67 L. ed. 179; *Ex parte Muir*, 254 U. S. 522, 65 L. ed. 383, 387; *The Pesaro*, 255 U. S. 216, 65 L. ed. 592; *The Sao Vicente*, 281 Fed. 111; and cases cited).

Where the summons and complaint do not show that the Court cannot possibly obtain jurisdiction, the Court *prima facie* obtains jurisdiction.

> "It is the pleading on the part of the plaintiff that determines whether the Court has jurisdiction or not, and not the defense."
>
> *Works on Jurisdiction*, p. 31;
> *Denny* v. *Pironi*, 141 U. S. 121;
> *Timmons* v. *Elyton Land Co.*, 139 U. S. 378.

And immunity is waived by the filing of a general appearance. (*The Sao Vicente*, 260 U. S. 151, 67 L. ed. 179; *Id.* 281 Fed. 111, 114; *Farrar* v. *U. S.*, 3 Pet. 459, 7 L. ed. 741; *Clark* v. *Barnard*, 108 U. S. 436, 447, 27 L. ed. 780, 784; *Gunter* v. *Atlantic Coast Line R. Co.*, 200 U. S. 273, 50 L. ed. 477; *Porto Rico* v. *Ramos*, 232 U. S. 627, 632, 58 L. ed. 763, 765; *Smith* v. *Reeves*, 178 U. S. 436, 441.)

> "An appearance is the process by which a defendant *submits himself to the juris-*

diction of the court. An appearance is either general or special. *By a general appearance a defendant appears for all purposes in the suit.* By a special appearance he appears solely for the purpose of objecting to the jurisdiction."

1 Foster on Federal Practice, Sec. 168, p. 976.

"The taking of any proceeding other than a special appearance and a motion or plea founded thereon, *is equivalent to a general appearance and a submission of the defendant's person to the jurisdiction of the court.*"

1 Foster on Federal Practice, Sec. 169, p. 977;

New Jersey v. *New York*, 6 Peters, 323;

Fitzgerald &c. Co. v. *Fitzgerald*, 137 U. S. 98;

Thames & Mersey Ins. Co. v. *U. S.*, 237 U. S. 19.

In a case involving this same defendant and the Republic of Portugal, the Circuit Court of Appeals said:

"The immunity of the sovereign, being susceptible of waiver, is lost when the sovereign enters a litigation with a general appearance."

The Sao Vicente, 281 Fed. 111, 114; *see Id.* 260 U. S. 151. Here, the defendant not only entered a general appearance through experienced native counsel retained for that purpose, but pleaded to the facts set forth by plaintiff as the basis for his action, and in every way submitted itself to the Court's jurisdiction. It sub-

mitted to the Court's determination the question of whether the *facts* established the cause of action asserted, and the determination of certain alleged defenses-in-fact to the cause of action. The pleading of *defenses* simply illustrates how completely this defendant submitted to jurisdiction of its person. Even the alleged sovereign relationship of defendant, in so far as it was pleaded, was alleged as a possible defense; and not made the basis of proper objection on special appearance to the assumption by the Court of any jurisdiction over the defendant. But sovereignty of a defendant is not a *defense* to a cause of action in which the sovereign's person is submitted to the Court's jurisdiction, and available agencies and properties are within the jurisdiction, but is a ground only for claiming immunity to such jurisdiction unless the sovereign submits or waives its right. That is, a claim against a sovereign is none the less a valid claim because the debtor is a sovereign, the only distinction between it and a claim against an individual being the right of the sovereign to claim immunity, or submit to suit, in its discretion. (*The Siren* v. *U. S.*, 7 Wall. 152, 74 U. S. 152, 19 L. ed. 129; *U. S.* v. *Wilder*, 3 Sumn. 308, Fed. Cas. 16694; *Santissima Trinidad*, 7 Wheat. (U. S.) 283; *The St. Jago de Cuba*, 9 Wheat. (U. S.) 409; *The Pesaro*, 277 Fed. 473; *Id.* 255 U. S. 216.)

The allegations of the answer were not sufficient to raise the question of jurisdiction, as might be done by a proper objection thereto, or a plea of immunity, upon special appearance. An exactly similar answer and alleged defense,

set up in the manner here involved, were considered in *The Sao Vicente*, 260 U. S. 151, 67 L. ed. 179, *Id.* 281 Fed. 115, and held to be insufficient to raise the question. It was held both that the Consul General was not a competent person to raise the question on a plea of immunity, and that, in addition, the allegations of the answer were insufficient and not proper to raise the question.

It is also to be considered that when a foreign sovereign, or representative or department of such sovereign, enters another country for the purpose of commerce and trade—in competition, indeed, with private citizens of such country—it voluntarily relinquishes, necessarily, some of its sovereign status and immunity, and the agencies it employs enjoy no such immunity. (*U. S. v. Wilder*, 3 Sumn. 308, Fed. Cas. 16694; *The Prins Frederick*, 2 Dods. R. 451 (Eng.); *The Exchange*, 7 Cranch. 116; *Ex parte Hussein Lufti Bey*, 256 U. S. 616; *Bank of U. S. v. Planters Bank*, 9 Wheat. 904, 6 L. ed. 244; *Ex parte New York*, 256 U. S. 490, 65 L. ed. 1057.)

Here, it may be noted that the case of *De Simone v. Transportes Maritimos do Estado*, 200 App. Div. 82, relied on by plaintiff-in-error is neither binding on this Court, nor an authority in point. That was a suit in a State Court under the State Code. The Code itself provided that objection to jurisdiction to the person might be made in spite of a general appearance and in answer to the complaint. But though thus clearly distinguishable from the case at bar, it is also submitted that that case cannot be applied

to a suit in the Federal Courts such as this, where the departments of the Federal Government must work in harmony, and the rule followed which requires such Courts to rely upon the State Department, and diplomatic officials by it duly accredited, for the establishment of the sovereign status of unknown foreign entities, and for the appropriate objections and suggestions to the Court on the question of its exercising jurisdiction over such party.

Wulfsohn v. Russian Soviet Government, 195 N. Y. 472, even if that case should be approved by the Supreme Court, cannot be considered as authority for the principle that Courts may determine the sovereign status of unknown entities, without recognition by the State Department, and the certificate of the State Department as to the same. The Russian people is admittedly sovereign; the Russian Government is admittedly a member of the society of nations. To hold that a New York State Court may not assume jurisdiction over such entity is quite a different thing from holding that a Federal Court must renounce jurisdiction of an entity sued as a corporation, upon a mere informal and improper suggestion to the Court, on the behalf of such entity and by its officials, that it is related to a certain foreign recognized sovereign.

In the present case, there can be no question but that the general appearance interposed was on behalf of the defendant, Transportes Maritimos do Estado, by its officers and agents, with its knowledge and consent, and, not with an idea of appearing specially for the purpose of vindicating an assured right of sovereignty, but

for the purpose of *defending the action*. Under such circumstances the Court clearly obtained jurisdiction over the person of such defendant by its voluntary appearance and consent, and through the waiver of any right of immunity which such defendant might possibly have had.

POINT III.

The Republic of Portugal never properly objected to jurisdiction and waived any right to claim immunity which it might have had.

The nature of the right of immunity accorded by international law and comity has been discussed in Point II hereof, where it has been shown that such right is a personal privilege and may be waived.

In the present case, it cannot be denied that the Portuguese Government had knowledge of the assumption of full jurisdiction over the defendant, Transportes Maritimos do Estado, by the Court, since in all stages of the case its Consul General took an active part in the defense of the case. Yet, though the answer was filed as early as November 19, 1920, the Portuguese Government, on its own behalf, made no move to claim immunity through its diplomatic officials until March 10, 1923, when a suggestion was filed in court by the Ambassador that the defendant was a department of the government of Portugal. During this time full jurisdiction of the defendant had been held. The defendant itself had submitted to that jurisdiction, and actively

appeared in the case as a litigant, waiving fully any claim of immunity it might have had. Costs were run up, expenses incurred, undertakings filed, stipulations entered into. Clearly the Court had jurisdiction.

Certainly, if the Portuguese Government was entitled to claim the defendant as a department of its government, then the acts of the defendant were the acts of such government, and in seeking to assert the relationship for its advantage, such government must also accept the disadvantage caused by such acts, as well. The submission to jurisdiction and the waiver of immunity of defendant operated also as the submission and waiver of such government. And such government, itself, in full knowledge of all these facts, and with its own consular officials involved in the litigation of the case, waived its right of immunity and submitted the defendant to the jurisdiction of the Court by acquiescing in its appearing in such court as a litigant, and by its failure properly to object.

In addition, the objection finally made by the Ambassador was improper and insufficient in form. In *The Pesaro*, 255 U. S. 216, the Supreme Court, discussing a similar situation, said:

> "The suggestion was made directly to the court and not through any official channels of the United States. True, it was accompanied by a certificate of the Secretary of State stating that the Ambassador was the duly accredited diplomatic representative of Italy, but while that established his diplomatic status it gave no sanction to the suggestion. The terms and form of the suggestion show

> that the Ambassador did not intend thereby to put himself or the Italian Government in the attitude of a suitor, but only to present a respectful suggestion and invite the court to give effect to it. He called it a 'suggestion' and we think it was nothing more. In these circumstances the libellant's objection that, to be entertained, the suggestion should come through official channels of the United States was well taken."

And in *Ex parte Muir*, 254 U. S. 522, the Supreme Court said:

> "It was open to that government to make the asserted public status and immunity of the vessel the subject of diplomatic recommendations to the end that, if that claim was recognized by the Executive Department of this Government, it might be set forth and supported in an appropriate suggestion to the court by the Attorney General, or some law officer acting under his direction. * * * The reasons underlying that practice are as applicable and cogent now as in the beginning, and are sufficiently indicated by observing that it makes for better international relations, conforms to diplomatic usage in other matters, accords to the Executive Department the respect rightfully due to it, and tends to promote harmony of action and uniformity of decision."

This rule was again applied in *The Sao Vicente*, 260 U. S. 151, 67 L. ed. 179; and in *Matter of Transportes Maritimos do Estado*, decided by the Supreme Court February 18, 1924.

Hence, the argument of the plaintiff-in-error predicated upon the refusal of the Secretary of State to make a suggestion to the Court in this

case, is not apt. That refusal is no cause for this Court to reverse the rule followed heretofore, but is, on the contrary, good reason for continuing to apply such rule. The entire matter of vindicating sovereign prerogatives is a diplomatic one. And since it is a matter primarily to be determined by the Executive Department, then when it is shown by plaintiff-in-error that the whole facts have been laid before the State Department and it has declined to interfere or make any suggestion on behalf of the Portuguese Government in the matter, that is only more reason for holding that in this case the Judiciary should not, on this improper and tardy application of the foreign Minister, reverse its established rule and give effect to a suggestion which the State Department has refused to recognize, or take action which the State Department has declined to suggest and obviously does not consider appropriate.

The judgment should be affirmed with costs.

Respectfully submitted,

SILAS B. AXTELL,
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IN THE

Supreme Court of the United States

No. 265.

29

TRANSPORTES MARITIMOS DO ESTADO,

Plaintiff-in-Error,

—against—

SYLVIO A. ALMEIDA,

Defendant-in-Error.

BRIEF OF PLAINTIFF-IN-ERROR IN REPLY.

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No. 265.

TRANSPORTES MARITIMOS DO ESTADO,
Plaintiff-in-Error,

—against—

SYLVIO A. ALMEIDA,
Defendant-in-Error.

BRIEF OF PLAINTIFF-IN-ERROR IN REPLY.

POINT I.

The Seaman's Act does not confer jurisdiction on the United States District Court in this case.

1. The section on which the defendant-in-error relies is Section 4 of the Seaman's Act of March 4, 1915 (Section 4530 of the Federal Statutes Annotated, Vol. 9, p. 158). This section provides that any court having jurisdiction may take action to enforce the rights therein given, to wages of any seaman on a vessel of the United States, and provides at its close:

> "That this action shall apply to seamen *on foreign vessels while in harbors of the United States*, and the *courts of the United States* shall be open *to such seamen* for its 'enforcement.'"

Section 4529 of the United States Revised Statutes, also a point of the Seaman's Act, Section 3 (Federal Statutes Annotated, Vol. 9, p. 156) pleaded by the defendant-in-error provides that the master or owner of certain vessels, therein enumerated shall pay the wages due to seamen within two days after the termination of the shipping agreement or after his discharge and provides a penalty for non-payment, "*which* sum shall be recoverable *as* wages in any claim made before the court" (Record, p. 3).

These sections, where they confer any jurisdiction, confer only jurisdiction in Admiralty.

Neither of these sections have any application to the case at bar. The Section 4530 is the only one which confers jurisdiction on the Court in the case of a claim of a foreign sailor, and Section 4529 does not in any way enlarge this jurisdiction, but merely provides that the penalty may be recovered in any claim made before the Court. *Section 4530* is confined in its application to claims of seamen on foreign vessels *while said vessels are in the harbors of the United States;* that is to seamen whose shipping agreement terminates while the vessel in which he shipped is in our ports or to seamen who are discharged from a foreign vessel while it is in our port. The record in this case shows that the shipping agreement of the defendant-in-error terminated at Lisbon or that he was discharged at Lisbon, while his vessel the "Goa" was in the port of Lisbon (Record, p. 11). The voyage terminated at Lisbon (Answer, Record, p. 5). This man remained in Portugal for some time and then was returned by the defendant *as a passenger* on another ship, the

"Cunene" (Record, p. 11). There is nothing in this case to show that the "Goa" was in a port of this country when the voyage terminated or when the defendant-in-error was discharged or that she ever returned to this country. The jurisdiction of the United States Courts in these cases of wages of a foreign seaman against a foreign vessel are confined according to the statute which must be strictly construed to "seamen on foreign vessels while in *harbors* of the United States, and also the said jurisdiction is similarly restricted according to the decisions of our courts." (*The Ixion*, 237 Fed. 142; *The Talus*, 242 Fed. 954; *The Imberhorne*, 240 Fed. 830; *The Ester*, 190 Fed. 217.) In this last case the Court said:

> "The Merchant vessels of one country visiting the ports of another for the purposes of trade subject themselves to the laws which govern the port they visit, *so long as they remained.*" *United States* v. *Dickelman*, 92 U. S. 520; *Wildenhaus'* case, 120 U. S. 11.

In the absence of treaty stipulations, the Courts of admiralty have civil jurisdiction in all matters pertaining to the foreign ship while in port, and also in certain cases when the Court has the vessel in its territorial jurisdiction, although the cause of action arises on the high seas. *The Belgenland*, 114 U. S. 355, *Wildenhaus'* Section 4530 in other respects shows the limitation of its application here contended for. It says:

> "Every seaman shall be entitled to receive one-half part of the wages which *he shall have then* earned, *at every port* where such vessel, after the voyage has been commenced, *shall load or deliver cargo* before its voyage has ended. And when the

> voyage is ended every such seaman shall be entitled to the remainder of the wages which shall *then be due him.*"

As said in the *Talus* (242 Fed. 954), the use of the expression "'one-half the wages which he shall have then earned' can only indicate that it was the intention of Congress to give seamen the right to demand one-half of all the wages which such seamen shall have earned at the time of the demand made, at every port where such vessel shall load or deliver cargo" were clearly meant to show when and also where the demands could be made, that is when and where they became due, and when the vessel was in the harbor. The same construction should evidently be given to the expressions "shall then be due" at the end of the voyage when the vessel is in a harbor of the United States.

Any other idea of the law would be illogical and unreasonable. Under the view contended for by the defendant-in-error, an alien seaman discharged from a foreign vessel in a foreign port could come to this country and sue the employer, also an alien, in our courts in spite of the fact that the United States Courts have no jurisdiction in actions between aliens. This defendant-in-error is in every sense an alien. There is no claim even that the wages sued for were earned while in a port of the United States (*The Ixion, supra*). The "Goa" is a foreign vessel. Its owner was the sovereign government of the Republic of Portugal, and it was not in a port of the United States or within its jurisdiction at the time the alleged claim arose.

The statute, the Seaman's Act, in every sense contemplates a proceeding against the vessel; that is, it confers

admiralty jurisdiction and only admiralty jurisdiction in the cases specified. Section 4547 (Federal Statutes Annotated, p. 168) provides for the issue of process against the vessel. There is no provision anywhere in the law for an action against the owner of the vessel at law and not even for an action in admiralty *in personam* against the owner. These facts indicate also that it was the purpose of Congress to confine the application of the statute to claims of seaman's wages only to cases where the vessel was in a harbor of the United States or in the jurisdiction of the Court and to give a remedy against the vessel in admiralty to seamen on such vessel. In this case the writ was one in an action at law by an alien against his alien employer, with an attachment against the "Cunene," on which he had never been a seaman. This was a proceeding not contemplated by the statute. After leaving the "Goa" after his discharge in Portugal he came to this country as a passenger and in his capacity as any other citizen of a foreign government sued his employer at law in this country, on a breach of contract. It makes no difference what the nature of the contract was or how it arose the suit is truly that of one alien against another and not that of a seaman of a foreign vessel against that vessel while in a harbor of the United States as contemplated and provided for in the Seaman's Act. It is moreover an action between aliens for breach of a contract made on Portuguese territory in the Consulate or on a Portuguese ship and wholly to be performed on a Portuguese ship, that is, within the territory and jurisdiction of Portugal.

II. Since the Seaman's Act confers only admiralty jurisdiction as will be apparent from a reading of all its provisions as to suits by sailors against vessels, and this action is at law it is not within the Seaman's Act and the Court has no jurisdiction herein.

III. Since the Seaman's Act does not confer jurisdiction in this case there is nothing in the Seaman's Act in conflict with any treaty with Portugal and Section 16 of that act does therefore not abrogate such treaty. Under the provisions of the most favored nation clause in the treaty with Portugal, Appendix A attached, the consular authorities of Portugal should have exclusive jurisdiction of controversies between the captains and members of crews of vessels of that nation, in as much as similar provisions, treaties and agreements have been made with other nations and under this most favored nation clause in this treaty with Portugal, the Courts of the United States are without jurisdiction in this action between a Portuguese seaman, an alien, and this plaintiff-in-error, even if it were merely an alien and not a sovereign, as is the fact in this case. (*The Rindjani*, 254 Fed. 913; *The Alberzen*, 223 Fed. 443, *The Ester*, 190 Fed. 216; *The Gunny*, 1 *Am. Maritime cases*, 425; *The Salomon*, 29 Fed. 534.)

IV. The Seaman's Act even where it confers jurisdiction in actions for wages against foreign vessels does not confer jurisdiction over a foreign sovereign or any vessel which is its sovereign property.

POINT II.

The direct appeal to this Court was and is proper.

1. The sole question at issue on this appeal is that of the lack of jurisdiction of the District Court in this action either because of the sovereignty of the plaintiff-in-error and its consequent immunity, or because the action is an action at law between aliens and one over which a Federal Court has no jurisdiction.

The questions of jurisdiction involved in this appeal, aside from the sovereign immunity of the plaintiff-in-error, are not questions of general jurisdiction applicable to state as well as federal courts, but are questions of the jurisdiction of the District Court as a Federal Court.

2. This action was brought under the Seaman's Act (Complaint, Rec., p. 3) at law by an alien seaman for wages earned on a foreign vessel on a voyage for which he had shipped beginning at New York and terminating at Lisbon, where he was discharged, and paid off and on a simple contract thereto added to provide him with passage back to New York (Record, pp. 3, 4, 5, 11). The contract was one entered into on Portuguese territory in its Consulate (Record, p. 2) to be performed outside of the United States and on a voyage terminating in Portugal, where he left the ship which was not thereafter in a harbor of the United States. The Seaman's Act, a Federal Statute, only confers jurisdiction upon a United States Court to entertain a libel against a vessel while she is in a harbor of the United States for wages then earned and due; that is it confers jurisdiction

under such circumstances only *in admiralty* against the vessel. It confers no jurisdiction against the owner *in personam* nor at law (Point I, *supra*).

It certainly does not give the right to an alien, regardless of the nature of his claim, to come to this country, after discharge by his employer, as a passenger and sue his alien employer here in the United States Court for a mere breach of contract. Therefore the District Court as a Federal Court, had no jurisdiction in this case under the Seaman's Act. This Act confers no jurisdiction in cases of this kind upon any State Court at all. Consequently it will be clear that the jurisdiction claimed in this case by the defendant-in-error was the jurisdiction of the District Court as a Federal Court based upon a Federal Statute which conferred a certain limited and specific federal jurisdiction, in admiralty *in rem*, upon that Court as a Federal Court (Point I, *supra*).

3. As the District Court acquired no jurisdiction under the Seaman's Act to entertain this action, the jurisdiction of the Court as a Federal Court must be governed by other rules. The District Court as a Federal Court is without jurisdiction because, the action, not being authorized by the Seaman's Act, it is merely an action at law between aliens for a breach of contract in which the amount involved is less than $3,000 (Judicial Code, Sec. 24). An action at law between aliens cannot be maintained in a United States District Court where, as in this case, no federal question is involved in the basis of the claim, and it cannot obtain such jurisdiction by consent, and therefore not by a waiver of the parties (*Cunard S. S. Co.* v. *Smith*, 255

Fed. 846 and other cases cited in Point V, p. 26 of the main brief herein of the plaintiff-in-error). A Federal Court has no jurisdiction of suits between aliens (Judicial Code, Sec. 24; Federal Statutes Annotated, Vol. 4, p. 838, and at p. 973, Sec. XIV and cases there cited).

4. As the amount involved is less than $3,000, the United States District Court is for this reason under the Federal Statutes without jurisdiction in the case (Judicial Code, Sec. 24).

It will be evident from the foregoing that the question of jurisdiction in this appeal is not one of general jurisdiction but one of the jurisdiction of the District Court as a Federal Court and that these grounds are sufficient to bring the case within the rule under which the appeal should be taken directly to this Court on the question of jurisdiction, aside from the question of the want of jurisdiction of the Court over the plaintiff-in-error as an independent sovereign.

5. In this case moreover on the question of jurisdiction the construction of a treaty between the United States and the Republic of Portugal (Appendix A) of which this Court can take judicial notice, is involved in the disposition of this case, and this fact further serves to bring this case within the rule of Section 238 of the Judicial Code, directing an appeal from the District Court direct to this Court as within its exclusive appellate jurisdiction. (*Johnson* v. *Gearlds*, 234 U. S. 422; *McGovern* v. *Philadelphia &c. R. Co.*, 235 U. S. 389.)

6. Even though the Treaty may not have been referred to in the Record herein, as under the Treaty this question is here involved, and this Court may take

judicial notice of all treaties, it may in this case of a general appeal, with a sole question of jurisdiction certified, proceed to determine all the questions, since the appeal opens the whole case (*Giles* v. *Harris*, 189 U. S. 475). The question of the nature of this action as one at law between aliens for only $485, is necessarily involved in the decision of this case on the question of jurisdiction, and as the record herein contains the evidence of this fact of the nature of the action, it is properly before this Court on this writ of error herein (*Wetmore* v. *Rymer*, 169 U. S. 115; *Chicago* v. *Mills*, 204 U. S. 321; *Commercial Mutual Accident Co.* v. *Davis*, 213 U. S. 245). The record in this case, and not the certificate of the trial Judge furnishes the basis for determining whether the suit presents questions for the determination of this Court upon the issues involved (*Cosmopolitan Mining Co.* v. *Walsh*, 193 U. S. 460). If an appeal be taken upon one question of jurisdiction mainly, as of sovereignty of the plaintiff-in-error, the judgment may be reversed for a fatal defect of jurisdiction on another ground shown in the record, *e. g.*, the nature of the action herein as one at law between aliens which clearly appears on the record herein (*Fishback* v. *Western Union Tel. Co.*, 161 U. S. 96). The record of the case must *affirmatively show jurisdiction* in the District Court, and as in this case the record does not affirmatively show such jurisdiction, but it does show affirmatively the lack of such jurisdiction as it shows (Record, pp. 3, 4, 5, 11) that it is an action between aliens and not sanctioned by the Seaman's Act (Point I, *supra*) this Court, of its own motion should so declare and make such an order as will prevent the District Court from exercising an authority not conferred upon it by Statute (*Min-*

nesota v. *Northern Securities Co.*, 194 U. S. 48; *Vance* v. *W. A. Vandercook Co.*, 170 U. S. 468). If the appellate jurisdiction of this Court should be deemed to fail as far as one question of jurisdiction raised is concerned and another fatal to that jurisdiction appears in the record the Court may reverse the judgment.

7. In any event if this Court should deem that the appeal is not properly before it because the question of sovereign immunity is a question of general law, and no question of the jurisdiction of the District Court as a Federal Court is involved in this appeal, then as stated in the case of the *Oliver American Trading Co.* v. *The Government of the United States of Mexico, et al.*, (No. 622) decided April 7, 1924; "the case must be transferred to the Circuit Court of Appeals for the Second Circuit (Section 238 (a) of the Judicial Code, Act of September 14, 1922, c. 305, 42 Stat. 837)" and it should be so ordered.

POINT III.

The proof of the sovereign status of the plaintiff-in-error is competent and sufficient.

1. The plaintiff-in-error, Transportes Maritimos Do Estado was shown by the testimony of Alvaro A. N. Ribeiro and by the documents submitted in Defendant's Exhibit A to B, to be an integral part of the sovereign government of Portugal (Record, pp. 12-13). Senor Ribeiro testifies as the director and therefore the head of the Transportes Maritimos Do Estado, that as to what its entity is and it would seem that the testimony of the

head of such an entity, be it a corporation or not, would be most competent to prove the facts as to what that entity actually was. In his testimony he states directly, not as a conclusion, but as a fact that the Transportes Maritimos Do Estado is a department of the government of Portugal. His testimony is clearly to the effect that the Transportes Maritimos Do Estado is not a corporation, that it has no capital stock or stockholders, and, as stated, that it is actually a department of the sovereign government of Portgual (Exhibit A, attached to Record, pp. 24-55).

2. Not only do we have the testimony of Senor Ribeiro, but there is also attached to the Commission actual copies of the decrees of the government of Portugal, under which the Transportes Maritimos Do Estado was organized and exists, both in Spanish and in Portuguese and in translation thereof in English (Exhibit A, *supra*, pp. 82-92). The originals of these papers and documents were all duly and properly authenticated and certified by the Minister of Foreign Affairs of the government of Portgual (Exhibit A, *supra*, p. 30) and as required upon the proper execution of the Commission for the taking of testimony for use in the District Court.

This testimony, as stated, clearly proves that the Transportes Maritimos Do Estado is a department and part of the sovereign government of Portugal by stating the facts from which this conclusion must be drawn, and it is for the Court, upon this testimony to draw this conclusion. It must follow as a matter of strict logic that if the government of Portugal is sovereign and immune, then an integral part of that government, as the Transportes Maritimos Do Estado is shown to be, must partake of the sovereignty and

immunity of that government. Its status with reference to the government of Portugal is in all essentials equivalent, as shown by this testimony, to that of the United States Shipping Board with reference to the United States of America, and the sovereignty and immunity of the United States Shipping Board as a part of the government of the United States of America is well known and by all conceded.

3. The suggestion of the Minister of Portugal filed herein also stated that the Steamship "Goa" mentioned in the complaint herein was owned by the Republic of Portugal, and that the Transportes Maritimos Do Estado was not a corporation but was a department of the aforesaid government of Portugal and that as such, a part of said government of the Republic of Portugal, and a sovereign, it was not subject to the jurisdiction of the court. These allegations were made by an officer or official of the government of Portugal of the proper diplomatic status to render him a proper person to make such allegations and to claim immunity on behalf of his said government, and his statements are therefore competent as evidence of the sovereign statutes of the said Republic of Portugal.

4. The suggestion of the Minister is conclusive. The defendant-in-error contends that the Court is not warranted in acting upon this suggestion. In as such as the defendant-in-error did not traverse or deny the contents of the suggestion in any way and it was admitted in evidence without objection or exception, it is in any event conclusive as to all material statements of fact. (*The Roseric*, 254 Fed. 154.) There is abundant authority that such a suggestion is conclusive. (*The Parlement*

Belge, L. R. 5 P. D. 197; *The Exchange*, 7 Cranch 116; *The Claveresk*, 264 Fed. 276, 280; *The Maipo*, 252 Fed. 627; *The Roseric*, 254 Fed. 154; *The Attualita*, 238 Fed. 912; *The Eolo* (1918) (Ir. 78.). In *The Parlement Belge*, *supra*, Lord Justice Brett said:

> "The ship has been by the sovereign of Belgium, by the usual means, declared to be in his possession as a sovereign, and to be a public vessel of the State. It seems very difficult to state that any court can inquire by contentious testimony whether that declaration is or is not correct. To submit to such an inquiry before the Court is to submit to its jurisdiction. It has been held that if the ship be declared by the sovereign authority by the usual means to be a ship of war, that declaration cannot be inquired into. That was expressly decided under very trying circumstances in the case of *The Exchange*, 7 Cr. 116. Whether the ship is a public ship used for national purposes seems to come within the same rule."

In *The Claveresk*, *supra*, the Circuit Court of Appeals for the Second Circuit said that it felt "no inclination to depart from the rulings of the *Carlo Poma*, 259 Fed. 396, and *Agency, etc., Co.* v. *American, etc., Co.*, 258 Fed. 363, holding that a certificate such as this, describing a certain act and avowing it as governmental, is to be taken as verity." The Circuit Court of Appeals for the Third Circuit reached the same conclusion in *The Adriatic*, 258 Fed. 902, 904. The defendant-in-error has at no time challenged the facts suggested, and his suggestion that the suggestion is not conclusive or competent is contrary to established principle and practice.

5. That the said Exhibit A (10) of plaintiff-in-error, *supra*, containing testimony of Mr. Ribeiro and the copies of the aforesaid documents and also plaintiff-in-error's Exhibit B containing the suggestion of the Minister of Portugal *were admitted as evidence in this case without objection or exception* and therefore they and their contents *are properly before this Court and competent as evidence of the facts therein contained as to the entity and nature and status of the plaintiff-in-error* in this case in its relation to the government of Portugal and its consequent sovereignty and right to immunity by reason thereof. The testimony of Mr. Ribeiro, as stated, as the head and director of the Transportes Maritimos Do Estado, and the decrees of that government itself are clearly the best evidence of what the Transportes Maritimos Do Estado actually is in fact and the statement in evidence of the Minister is clearly competent as to the constitution and sovereign character of his government and its departments. Moreover, the testimony of Mr. Ribeiro and the decrees were obtained through a Commission duly issued out of the United States District Court for the Southern District of New York and duly and properly executed and returned to that court in the form prescribed by its practice and accepted by that court and inasmuch as it was as such admitted in evidence in this case by that Court *without exception or objection of counsel* as of the same force and effect as though it had been taken in this case instead of in the case in which it was actually taken, objection should not be permitted to be taken and sustained to its competency at this time.

6. In a case decided about two weeks ago in the Court of Appeals in London, *the Compania Mercantil Argentina v. The United States Shipping Board*, the United States Shipping Board was sustained in its contention

that as *a sovereign body it could not be sued.* In that case, after an offer of settlement under arbitration of the point in dispute had been declined by the Argentine Company, the Shipping Board withdrew its arbitrator. The Argentine Company, as plaintiffs, then started proceedings and the Board replied that it was a sovereign body and *could not be sued.* The Lord Justice Bankes in his judgment quoted a statement of the *Legal Advisor* of the Shipping Board in London that the Board was simply the Executive Branch of the Government of the United States for the purpose of acquiring and controlling a mercantile marine in the interest of the State. His view was that a sovereign sate could not be sued.

In the respect indicated above, the United States Shipping Board is practically identical with that of the Transportes Maritimos Do Estado as proven by the evidence of Mr. Ribeiro and the documents contained in the Exhibit A of the plaintiff-in-error, *supra.* As the United States Shipping Board is a branch of the United States Government, so the Transportes Maritimos Do Estado is a department of the Government of Portugal existing for the same reasons and purposes.

In this case too the United States Shipping Board was not obliged by the English Court to submit its suggestion through "diplomatic channels" or in fact to file any suggestion or information of the United States Minister or Ambassador at all. It accepted and treated as sufficient the statement of the United States Shipping Board's legal adviser, that is, its counsel, as sufficient to show the *sovereign status* of the Shipping Board. If the United States Shipping Board was immune in that case, then the Transportes Maritimos Do Estado, which is exactly the same kind of an entity and bears the same status to Portugal, is also immune.

POINT IV.

The Republic of Portugal never waived its objection to jurisdiction or its rights to immunity in this case.

This point the plaintiff-in-error believes has been covered in its main brief in Point II thereof, pages 9-17. It has there been shown that a general appearance and answer is not a waiver of immunity and cannot be so regarded, particularly where the objection to jurisdiction and the right to immunity is set up in the answer.

1. *In re Republic of Bolivia Exploration Syndicate, Limited.* Law Reports (1914) 1 Ch. 139, where there was a general appearance, Asbury, Judge, says on this point (italics ours):

> "It seems to me that both at common law and under the statute all writs against foreign public ministers accredited to the Court of this country are absolutely null and void, and that if and so far as waiver of that diplomatic privilege is possible it must be confined to cases of some very special nature as was the case in *Taylor* v. *Best*, 14 C. B. 487. The question is whether R. E. Lembcke's conduct brings him within that decision. I have felt considerable difficulty as to this. No doubt he entered an *unconditional appearance*, asked for further time to file evidence, and *filed evidence on the merits* stating his official position, but *not raising any question of privilege*. Has he thereby waived his privilege? It seems to me that on this question there are three matters to be considered. In the first place, having regard

to the earlier cases as to the absolute nullity of proceedings against foreign public ministers I am satisfied that waiver, if it be possible, must be strictly proved. It implies *a knowledge of the rights waived*, and I am not satisfied that R. E. Lembcke when he entered appearance and took the subsequent steps was aware of his privilege. Secondly, knowledge of our common and statute law cannot be imputed to a foreign subject residing here as diplomatic agent of a foreign state. Thirdly, I am far from satisfied that a subordinate secretary can effectually waive his privilege without the sanction of his Sovereign or Legation, and it is clear that, whatever knowledge R. E. Lembcke possessed, the objection on the ground of privilege is now taken with the sanction and at the instigation of the Peruvian Legation.

To some extent my view is supported by the 'Jassy' (1906) (p. 27), 273, which was a motion to dismiss an action for damages by collision on the ground that the vessel proceeded against was the property of a foreign sovereign State and destined to its public use. On March 6, 1906, the plaintiffs issued a summons *in rem* addressed to the owners of the 'Jassy,' and on March 18 the 'Jassy' was arrested at Liverpool, but released on an undertaking to put in bail given by solicitors acting for the owners' agent. On March 22 appearance for the owners was entered, and on April 12 the owners raised the question of privilege. Gorell Barnes, P., said: 'The result is that the principle laid down in the Parlement Belge, 5 P. D. 197, applies, *in spite of the undertaking to put in bail and appearance entered by some agent in Liverpool* without the knowledge of the Roumanian Government and under a misappre-

hension as to the privilege enjoyed by a sovereign State in respect of the immunity of its public vessels from arrest. The action will be dismissed with costs.'

"There is one other matter to be considered. Whatever be the true view of R. E. Lembcke's conduct in entering appearance and taking the subsequent steps, it is clear that the summons must prove abortive against him. *No judgment or execution can be enforced or levied against him, and the authorities show the impropriety of allowing the action to go on merely for the purpose of defining his liability.*

On the grounds above stated I am of opinion that there has been no effective waiver established in this case and that the plea of privilege must prevail with costs since June 10, 1913, when the objection was first taken."

From this case it will be seen that under English Law there can be no implied waiver, no waiver of immunity without a full and complete knowledge on the part of the person making the waiver and the effect of his acts as such and intent to waive and authority on his part to perform the acts.

2. As to the suggestion of the defendant-in-error in his brief that by engaging in commerce and trade, if the plaintiff-in-error can be considered as having done so generally, the plaintiff-in-error waived its right to immunity, this does not appear to be the law.

The extent to which the immunity of publicly owned ships engaged in private business is recognized varies in different countries. In England and Scotland it is

recognized to the fullest extent. In the United States in the law of Federal Courts the weight of authority is in favor of immunity and against such waiver (*Roseric*, 254 Fed. 154 and the *Attualita*, 238 Fed. 909). In Germany the Court of Appeals of Hamburg held that the arrest of a vessel belonging to the United States Shipping Board was invalid even though the vessel was employed in ordinary commercial business.

3. Much stress is laid by defendant-in-error in his brief on the lack of sufficiently high diplomatic status of the consular officer who caused the appearance to be made in this action to claim or assert the sovereignty and immunity of his government. If this is true then surely no act of his can *waive* that immunity. If he has not a sufficiently high diplomatic status to enable him to assert his sovereign's immunity he has not sufficient status or authority to waive it, and as every act claimed as a waiver by the defendant-in-error was the act of the consular officer or done by his authority it follows that they were ineffective absolutely to constitute a waiver or consent to jurisdiction. There can be no waiver except by the sovereign itself. No act of any of its agents can constitute such a waiver (*Stanley* v. *Schwalby, supra*).

POINT V.

The suggestion of the Minister of the Republic of Portugal was submitted in the District Court in the only proper and possible manner.

I. This plaintiff-in-error filed its suggestion of want of jurisdiction by its duly accredited Minister Plenipo-

tentiary by offering it to the said District Court on the trial when and where it was accepted and admitted *without objection or exception* (Record, pp. 12, 13).

The procedure on the part of the plaintiff-in-error in the filing of the suggestion of its Minister was proper (*Ex Parte in Re State of N. Y. et al.*, 256 U. S. 490, 503; *In Re Baiz*, 135 U. S. 403; *The Adriatic*, 258 Fed. 902; *The Maipo*, 252 Fed. 627; *The Roseric*, 254 Fed. 154; *The Ragday*, 279 Fed. 130). In *The Maipo* (*supra*), the Court said:

> "While in many instances the suggestion that a ship is the property and in the possession of a foreign government would be made to the court by the proper official or department of our government I fail to find any support to the proposition that such course is necessary. (*In re Baiz*, 135 U. S. 403, 10 Sup. Ct., 854, 34 L. Ed. 222.) It is enough that the facts be presented to the court as here by the duly accredited official of the sovereign government."

The plaintiff-in-error was absolutely unable at any time to present or file the information and suggestion of its Minister with the Secretary of State for transmission by the Secretary of State to the Attorney General for submission to the Court; that is, through channels as laid down in cases of *Ex Parte Muir* (254 U. S. 522); *The Pesaro* (255 U. S. 216) and *Ex Parte Hussien Lufti Bey* (256 U. S. 216).

1. In this and other actions against this plaintiff-in-error or its property its Minister Plenipotentiary and Envoy Extraordinary did in person, as stated in the main

brief herein (p. 24), present the aforesaid suggestion to the Secretary of State with the request that it should be so transmitted to the Attorney General of the United States for submission to the Court, in accord with the aforesaid manner of advancing a claim of immunity as laid down in the aforesaid cases, but the Department of State refused to accept said suggestion or so to transmit the same to the Attorney General as requested by said Minister, and informed the plaintiff-in-error through its said Minister that the State Department had made a rule not to accept suggestions from Ministers of foreign nations in cases of this kind. A lawyer in said State Department cited to the said Minister as showing the manner in which said suggestion should be presented to the Court and the course to be followed, the cases of *The Ragday*, 279 Fed. 130; *The Maipo*, 259 Fed. 257, and *The Adriatic*, 258 Fed. 902.

2. Relying upon this information so given by the Department of State, the plaintiff-in-error submitted the suggestion and advanced its claim of immunity to the jurisdiction of the United States District Court as hereinbefore set forth, and in view of the said ruling of the State Department it would appear that the necessity of having a suggestion from a foreign Minister of the sovereignty and immunity of his government to the jurisdiction of the United States Courts come through the Department of State and the Attorney-General of the United States; that is, through the official channels, as indicated in the cases above cited has been removed, and that this course has been rendered impossible through the discontinuance of this practice by the State Department.

3. Since, therefore, the Department of State has made the aforesaid ruling and in accord therewith refused to accept and transmit the suggestion of the plaintiff-in-error and its claim of immunity through the official channels, as indicated in the cases above cited, it will be apparent to this Court that the plaintiff-in-error could not advance its claim of immunity in the manner as set forth in the said cases of *Ex Parte Muir*, *The Pesaro*, and *Ex Parte Hussein Lufti Bey* (*supra*). This being true, the plaintiff-in-error believes that this Court will not find that failure on its part so to file and submit its suggestion through the said official channels should bar it from the rights of immunity to which it is entitled as a sovereign nation.

4. If, on the other hand, it is still necessary for a sovereign government to advance its claim of immunity in the manner set forth in the said last cited cases, in spite of the ruling of the Secretary of State, then the ruling of the Secretary of State effectively deprives a sovereign government of all privilege or right to assert its immunity to the jurisdiction of our courts. Although the State Department is an executive or administrative department of the Government, by such ruling it assumes to decide whether or not a sovereign is entitled to immunity, that is to exercise a judicial function, or one beyond its province. It is not for the State Department to decide for itself whether or not a foreign sovereign is entitled to immunity in our courts.

5. The suggestion was properly presented. Coming from the Minister of Portugal, there could be no higher source of information. A public minister, as Mr. Justice Story said in *The Anne*, 3 Wheatley 435, 445, is invested

by virtue of his office with authority to vindicate the prerogatives of his sovereign. Our State Department assented to the presentation of the suggestion, as appears by the certification of the Secretary of State to Visconde d'Alte's official status. But it is argued that his suggestion should have been made by the government of the United States or one of the departments. On principle, this contention is unsound. As the doctrine of immunity is based upon the independence and dignity of the foreign sovereign, it cannot be that he must resort to the public authorities of another nation for the assertion of his rights. Such dependence would be incompatible with the recognition of independence. To deny a foreign sovereign the privilege of bringing suit in our courts or his right to assert for himself his immunity from suit, would be contrary to international comity (*The Sapphire*, 11 Wall. 164).

The procedure disclosed by the reported cases has not been uniform. While sometimes presented through the officials of the sovereign of the place (*The Exchange*, 7 Cranch 116), the suggestion has often been made directly by the accredited representative of the foreign sovereign (*The Maipo*, 252 Fed. 627; *The Constitution*, L. R. 4 P. D. 39; *The Crimdon*, 35 Times L. R. 81), or *by counsel* in his behalf as *amici curiae* (*The Roseric*, 254 Fed. 154; *The Adriatic*, 253 Fed. 489). In *The Tampico*, 16 Fed. 491, Judge Addison Brown, while stating that "objection to the jurisdiction alone might doubtless have been raised upon the information of the Attorney General of the United States, or the direct intervention of the accredited political representative of the Mexican Government," approved the intervention of any agent who could produce proper proof of his authority.

POINT VI.

The assumption of jurisdiction by the District Court herein and entry of the judgment against the plaintiff-in-error, was and is a violation of the existing treaty between the United States and the Republic of Portugal.

1. The immunity of the Republic of Portugal and of its property to the jurisdiction of the United States Courts in the said action is insured to it by the treaty obligations existing between the Republic of Portugal and the United States (Appendix A, hereto attached).

This Treaty, by the most favored nation clause, reserves to the Consular officers of the Republic of Portugal the disposition of all disputes between the officers and crews of Portuguese ships, including those concerning wages, and assures to the Republic of Portugal, in that most favored nation clause the same rights and privileges as accorded to other sovereign nations under similar circumstances. It thus reserves these said rights and jurisdiction to Portugal for the reason that by treaty similar rights as to these disputes are reserved to the Consular Offices of the Netherlands (Consular Convention, Aug. 1st, 1879, Art. 11) and other sovereigns (Sweden and Norway; Treaties of July 4, 1827 [8 Stat. 352, Art. 13]; and of June 1, 1910 with Sweden).

Under this Treaty the Republic of Portugal must be treated in matters of disputes such as involved in this action, on the same footing as other foreign sovereigns and the District Court had no jurisdiction in this action, particularly as it was not conferred upon it by

the Seaman's Act, as pointed out in Point I of this reply brief.

2. The treaty between this country and a friendly sovereign power is the supreme law of the United States, before which judgments and decrees of our courts in conflict therewith must give way. It stands upon a par with the Constitution and is equivalent to an act of the Legislature. It is the duty of our courts, and particularly of the United States Supreme Court, to enforce such treaties even to the extent of nullifying the judgments and decrees of the courts. (*Moodie* v. *The Phoebe Anne*, 3 Dall. 319; *The U. S. Schooner Peggy*, 1 Cranch, 103; *Foster* v. *Neilson*, 2 Pet. 253; *Wilson* v. *Wall*, 6 Wall. 83, 89; *Reichart* v. *Felps*, 6 Wall. 160; *Smith* v. *Stevens*, 10 Wall. 321; *Holden* v. *Joy*, 17 Wall. 211; *Martin* v. *Hunters Lessee*, 1 Wheat. 304; *Foster* v. *Neilson*, 2 Peters 253; and *United States* v. *Perchenan*, 7 Peters 51.)

In the case of *Martin* v. *Hunter's Lessee*, 1 Wheaton 304, the Court held that the Appellate jurisdiction of the Supreme Court extended to all cases where, a treaty having been drawn into question, the decision has been against the validity of the treaty or of a right or title claimed under it, and in such a case the Court is not restricted to the abstract question of treaty construction but has jurisdiction to examine and render a decision upon the claim of right or title actually made.

The whole question involved in the case at bar is whether technical rules of procedure shall be permitted to override principles cardinal in the law of nations. The plaintiff-in-error in this case was and is a depart-

ment of the sovereign Government of Portugal, and the judgment against it should not be permitted to be enforced.

3. The treaty between the United States and Portugal also provides that *merchant* ships owned and operated by the sovereign Government of Portugal or any department thereof should be granted and accorded the same status in the courts of the United States as the ships similarly owned and/or operated by the Government of the United States or any department thereof. Ships owned by the United States and owned and/or operated by the United States Shipping Board are not subject to libel *in rem* in the courts of the United States and the United States cannot be sued in admiralty on claims arising out of such ships or their operation *without its specific statutory consent.* Therefore, under the said treaty between the United States and Portugal, no vessel, even if it be a merchant vessel, *belonging to* or operated by a department of the sovereign Government of Portugal can be subject to libel *in rem* or process of the courts of the United States, nor should the Government of Portugal be subject to a suit on any claim involving any of *its* sovereign owned vessels, whether they be merchant vessels or not *without its consent similarly given.* The significance and sanctity of treaties between sovereign governments as such can not properly be overridden and displaced by any technical rules of procedure in the courts of this Government.

4. So that whether the vessel involved was a merchant vessel privately owned or a public vessel owned by the Government of Portugal, the Court had no juris-

diction in this case. If the "Goa" was a privately owned vessel, as shown in Point I, *supra*, the Court was for the reasons there given without jurisdiction as the action was between aliens, and as under the treaty which for the reasons stated in said Point I, was not abrogated by the Seaman's Act, the dispute involved was reserved to the Consular officers of Portugal for adjustment, and, if it was a public vessel, the same would be true, and the Court would also be without jurisdiction under the provisions of the treaty last cited, securing to Portuguese vessels in our ports the same rights, privileges and status as publicly owned vessels of the United States.

5. Finally where a treaty prescribes a rule by which rights can be determined, the courts will apply this rule (*Leighton* v. *United States*, 29 Ct. Cl. 288). The treaty between the United States and Portugal prescribes the rule that the sovereign public vessels of Portugal should be immune from the process and jurisdiction of our courts as shown above, just as vessels of the United States are immune and the United States cannot be sued *without* its legislative consent, and therefore it is respectfully urged that the judgment herein should be reversed.

6. Since clearly, therefore, the enforcement of the judgment of the District Court in this case is a violation of the treaty obligations of the United States and of the treaty rights of the Republic of Portugal, it is obvious that this Court in the exercise of its function of preventing said violation of treaty obligations and rights even to the extent of nullifying the judgments and decrees of the courts of the United States should prevent the enforcement of said judgment by a

reversal regardless of any technicality as to how the question is before this Court. This Court can take judicial notice of the lack of jurisdiction of the District Court and of the provisions of the treaty and the rights and obligations of the high contracting powers thereto, and of its own motion can and should take such action as may be necessary to prevent the exceeding of its jurisdiction on the part of the District Court and to insure the enforcement of the treaty.

7. In the case of *The Oliver American Trading Co. v. The Government of the United States of Mexico* (*supra*, p. 23), the immunity of the Republic of Mexico was upheld by the District Court, whether or not there was a general appearance by the Republic of Mexico and its Sovereignty was thus assured to it, and the appeal from this decision was on the 7th day of April, 1924, dismissed by this Court. In view of this fact under the favored nation clause of the said treaty, which assures the same rights and privileges to the Republic of Portugal as to any other sovereign, the sovereign immunity of the plaintiff-in-error should be sustained by this Court, and the said judgment of the said District Court against the plaintiff-in-error should be reversed.

Dated, New York City, April 30th, 1924.

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Appendix A.

Treaty Series, No. 514½

COMMERCIAL ARRANGEMENT
EFFECTED BY EXCHANGE OF NOTES BETWEEN
THE UNITED STATES AND PORTUGAL

Signed at Washington, June 28, 1910

[*The Portuguese Minister to the Acting Secretary of State.*]

LEGACAO DE PORTUGAL.
NOS
ESTADOS UNIDOS.

[Translation.]

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of Portugal and of the Algarves, duly authorized to that effect by his Government, has the honour to notify His Excellency the Acting Secretary of State of the United States of America, that, in view of the issuance by the President of the United States of America of the proclamations of January 29th, 1910 and of February 21st, 1910, extending to imports into the United States of America from the Kingdom of Portugal and the Azores and Madeira islands and from the Portuguese possessions, the benefit of the complete minimum tariff of the United States of America, it having been ascertained that no undue discrimination was being exercised in the Kingdom of

Portugal, the Azores and Madeira islands or the Portuguese possessions, against the United States of America or the products thereof, and the principle of special concessions by Portugal to Spain and Brazil having thus been recognized, the Portuguese Government has decided to grant the citizens, merchandise and ships of the United States of America the same treatment in Portugal and her possessions as that accorded to the citizens, merchandise and ships of the most favoured nation on the condition that the subjects, merchandise and ships of Portugal and of her possessions will likewise be treated in the United States of America in the same manner as those of the most favoured nations.

The undersigned avails himself of this opportunity in order to convey to the Honourable the Acting Secretary of State of the United States the renewed assurances of his highest consideration.

VISCOUNT D'ALTE

WASHINGTON, *June 28, 1910.*

The Honorable HUNTINGTON WILSON,
Acting Secretary of State,
etc., etc., etc.,

The undersigned, Acting Secretary of State of the United States of America, has the honor to acknowledge the receipt of the note of today's date in which His Excellency the Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of Portugal and of the Algarves, has been good enough to inform him that:

> in view of the issuance by the President of the United States of America of the proclamations of January 29th, 1910, and of February 21st, 1910, extending to imports into the United States of America from the Kingdom of Portugal, the Azores and Madeira islands and from the Portuguese possessions, the benefit of the complete minimum tariff of the United States of America, it having been ascertained that no undue discrimination was being exercised in the Kingdom of Portugal, the Azores and Madeira islands or the Portuguese possessions, against the United States of America or the products thereof, and the principle of special concessions by Portugal to Spain and Brazil having thus been recognized, the Portuguese Government has decided to grant the citizens, merchandise, and ships of the United States of America the same treatment in Portugal and her possessions as that accorded to the citizens, merchandise, and ships of the most favoured nations on the condition that the subjects, merchandise, and ships of Portugal and of her possessions will likewise be treated in the United States of America in the same manner as those of the most favoured nations.

Taking note of this declaration the undersigned hastens to declare, in the name of the Government of the United States of America, that the subjects, merchan-

dise, and ships of Portugal and of her possessions will be treated in the United States of America in the same manner as those of the most favoured nations.

The undersigned begs His Excellency the Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King f Prtugal and f the Algarvs to accept the renewed assurances of his highest consideration.

HUNTINGTON WILSON
Acting Secretary of State.

WASHINGTON, *June 28, 1910.*

His Excellency the Envoy Extraordinary and
Minister Plenipotentiary of His Majesty the
King of Portugal and of the Algarves,
etc., etc., etc.

SUPREME COURT OF THE UNITED STATES.

No. 265.—October Term, 1923.

Transportes Maritimos do Estado, Plaintiff in Error, *vs.* Sylvio A. Almeida.	In Error to the District Court of the United States for the Southern District of New York.

[May 12, 1924.]

Mr. Justice Brandeis delivered the opinion of the Court.

Almeida, a seaman, brought this action for wages against Transportes Maritimos do Estado on the common law side of the federal court for southern New York. The defendant appeared generally; answered that it was a department of the Government of the Republic of Portugal; offered evidence in support of the allegation; and claimed the immunity of a sovereign from all process. The District Judge entered judgment for the plaintiff in an amount stipulated by counsel; allowed a direct writ of error from this Court; and issued the certificate of a jurisdictional question provided for in Section 238 of the Judicial Code.

This court is without jurisdiction of the writ of error. It was settled in *Oliver American Trading Co.* v. *United States of Mexico*, 264 U. S. — (decided since the entry of the judgment below) that the claim of sovereign immunity does not present a question of federal jurisdiction within the meaning of Section 238. This is equally true whether the claim of immunity is contested because of the character of the defendant or because the immunity is alleged to have been waived. The question involved here is not that presented in *The Pesaro*, 255 U. S. 216, and *The Carlo Poma*, 255 U. S. 219. There, the question requiring decision was whether Congress had conferred upon the district court sitting in admiralty power to entertain a suit against "a general ship engaged in the common carriage of merchandise by water, for hire" which, at the time of the arrest, was owned by the Italian Government and was in its possession. That question being one of the jurisdiction of the court as a federal court, the direct appeal was sustained in *The Pesaro* and the appeal to the Circuit Court of Appeals was ordered dis-

missed in *The Carlo Poma.* A related question was presented in *The Sao Vicente,* 260 U. S. 151, which was likewise a suit in admiralty. There, the writ of certiorari was dismissed. Compare *In the Matter of Transportes Maritimos do Estado,* 264 U. S. —.

As the writ of error from this Court was improvidently allowed, the case must be transferred to the Circuit Court of Appeals for the Second Circuit. Section 238 (a) of the Judicial Code, Act of September 14, 1922, c. 305, 42 Stat. 837. ***Smith* v. *Apple,* 264** U. S. —.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.